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1905

SUPPLEMENT

TO

DEERING'S PENAL CODE

OF

CALIFORNIA

(Issued in 1903)

THE AMENDMENTS TO THE PENAL CODE ENACTED AT THE LEGISLATIVE SESSION OF 1905, WITH CITATIONS OF THE SUPREME COURT OF CALIFORNIA, FROM VOLUMES 138 TO 145, INCLUSIVE, OF CALIFORNIA REPORTS

BY

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SUPPLEMENT

TO THE

CODES AND STATUTES

OF

CALIFORNIA

WITH CITATIONS OF DECISIONS

PENAL CODE

§ 4. Supp. Cal. Rep. Cit. 139, 382.

§ 7. Words, terms and phrases in Penal Code, definition of. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; the word "county" includes "city and county"; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness; *provided*, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.

The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage;

2. The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

3. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person;

4. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law;

5. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission;

6. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity;

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canal-boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons;

8. The words "peace officer" signify any one of the officers mentioned in section eight hundred and seventeen;

9. The word "magistrate" signifies any one of the officers mentioned in section eight hundred and eight;

10. The word "property" includes both real and personal property;

11. The words "real property" are coextensive with lands, tenements, and hereditaments;

12. The words "personal property" include money, goods, chattels, things in action and evidences of debt;

13. The word "month" means a calendar month, unless otherwise expressed; the word "day-time" means the period between sunrise and sunset, and the word "night-time" means the period between sunset and sunrise;

14. The word "will" includes codicil;

15. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings;

16. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning;

17. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority;

18. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name;

19. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories;

20. The word "section," whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned. En. February 14, 1872. Am'd. 1873-4, 419; 1905, 635.

7. The purpose of the amendment is to make the section conform to the corresponding sections of the Civil Code and of the Code of Civil Procedure. The changes consist in the addition of the words "county includes city and county"; of the words "and typewriting"; and of the clause "provided, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto." The above changes make the above section conform to the corresponding subdivision in section 17 of the Code of Civil Procedure and in section 14 of the Civil Code. The defi-

nitions of "night-time" and "day-time" are added in subdivision 13, following the definitions in sections 450 and 463 of this Code, which confined the definitions to the chapters in which they occurred. The word "canal-boat" is printed "canals, boats," in the official Statutes of 1873-4, page 421, amending the section, and is hereby corrected to conform to the manifest intention of the statute, and to the original form of the section as enacted in the Code of 1872. Subdivision 20 is also added to correspond with a like provision in the other Codes.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 141, 114; 141, 115; 144, 355.

§ 16. Supp. Cal. Rep. Cit. 139, 213.

§ 17. Supp. Cal. Rep. Cit. 139, 213; 143, 599.

§ 19. Supp. Cal. Rep. Cit. 139, 116.

§ 21. Supp. Cal. Rep. Cit. 145, 140.

§ 27. **Crimes, persons liable to punishment for.** The following persons are liable to punishment under the laws of this state:

1. All persons who commit, in whole or in part, any crime within this state;

2. All who commit any offense without this state which, if committed within this state, would be larceny, robbery, or embezzlement under the laws of this state, and bring the property stolen or embezzled, or any part of it, or are found with it, or any part of it, within this state;

3. All who, being without this state, cause or aid, advise or encourage, another person to commit a crime within this state, and are afterwards found therein. En. February 14, 1872. **Am'd.** 1905, 638.

27. The amendment consists of a recasting of subdivision 2, designed to make it punishable in this state to embezzle money in another state and bring the money embezzled or some part of it into this state. The section as it now stands authorizes the conviction and punishment of persons committing larceny or robbery outside the state, who bring the property stolen into this state, but does not extend to the case of embezzlement.—Code Commissioner's Note.

§ 28. En. Stats. 1901, 11. **Am'd.** 1903, 236. Rep. 1905, 491.

§ 30. Supp. Cal. Rep. Cit. 144, 77.

§ 31. Supp. Cal. Rep. Cit. 138, 627; 138, 630; 143, 264; 144, 77; 144, 79.

§ 41. Supp. Cal. Rep. Cit. 142, 79.

§ 42. **Fraudulent registration.** Every person who willfully causes, procures, or allows himsef to be registered in any register of electors required by law to be made or kept, knowing himself not to be entitled to such registration, is punishable by imprisonment in the state prison for not less than one nor more than three years. En. February 14, 1872. Am'd. 1905, 639.

42. The amendment conforms the section to section 21 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

§ 42*a*. **Allowing fraudulent registration.** Every person who willfully causes, procures, or allows any other person to be registered in any register of electors required by law to be made or kept, knowing him not to be entitled to such registration, is punishable by imprisonment in the state prison for not less than one nor more than three years. En. Stats. 1905, 639.

42a. This is a codification of section 22 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

§ 45. **Fraudulent voting.** Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets, folded together, or changes any ballot after the same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those legally polled at any election, by fraudulently introducing the same into the ballot-box either before or after the ballots therein have been counted; or adds to, or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll-lists, or ballots, or ballot-box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters law-

fully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony. En. February 14, 1872. **Am'd.** 1905, 639.

45. Two clerical errors are corrected. The word "illegally," before "polled," is changed to "legally"; and the word "either" is omitted after "elector," and inserted between "ballot-box" and "before."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 145, 108.

§ 46. Attempting to vote when not qualified. Every person not entitled to vote, who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, or who personates, or attempts to personate, a person legally entitled to vote, is punishable by imprisonment in the state prison for not less than one nor more than two years. En. February 14, 1872. **Am'd.** 1905, 640.

46. Section 24 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

§ 47. Procuring illegal voting. Every person who procures, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, or who aids or abets in the commission of any of the offenses mentioned in the preceding section, is punishable by imprisonment in the state prison not exceeding two years. En. February 14, 1872. **Am'd.** 1905, 640.

47. Section 28 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

§ 49. Officers of election unfolding or marking ballots. Every inspector, judge, or clerk of an election who, previously to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in, to be opened or examined previously to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by a fine of not

less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. En. February 14, 1872. **Am'd.** 1905, 640.

49. Section 42 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

§ 49*a*. Officer of election who cannot read or write or refusing to serve. Any person acting as a member of any election board, or as a clerk upon such board, who cannot read and write the English language, or any person who refuses to act upon such board, or as a clerk thereof, after proper notification of his appointment, who is otherwise eligible, unless good and sufficient cause for such refusal is shown to the election board or board of supervisors, is guilty of a misdemeanor, and is subject to a fine of five hundred dollars, and upon failure to pay such fine, must be imprisoned in the county jail of the county for the period of one day for each two dollars of such fine. En. Stats. 1905, 640.

49a. This is the last sentence of section 1142 of the Political Code, the matter being of a nature which has an appropriate place in this Code.—Code Commissioner's Note.

§ 50. Forging or altering returns. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of true returns for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term not less than two nor more than seven years. En. February 14, 1872. **Am'd.** 1905, 641.

50. This is a codification of the first sentence of section 27 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

§ 51. Adding to or subtracting from votes cast. Every person who willfully adds to, or subtracts from, the votes actually cast at an election, in any official or unofficial returns, or who alters such returns, is punishable by imprisonment in the state prison for not less than one nor more than five years. En. February 14, 1872. **Am'd.** 1905, 641.

51. This is a codification of the second sentence of section 27 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

§ 54*a*. Receiving or contracting for any money or thing of value for voting or not voting. It is unlawful for any person, directly, by himself, or through any other person:

1. To receive, agree, or contract for, before or during an election, any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or refraining or agreeing to refrain from voting, for any particular person or persons at any election;

2. To receive any money, or other valuable thing, during or after an election, on account of himself or any other person having voted, or refrained from voting, for any particular person or persons at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or on account of having induced any other person to vote or refrain from voting, or to vote or refrain from voting for any particular person or persons, or to come to or remain away from the polls at such election;

3. To receive any money or other valuable thing, before, during, or after election, on account of himself or any other person having voted to secure the election or indorsement of any other person as the nominee or candidate of any convention, organized assemblage of delegates, or other body representing, or claiming to represent, a political party or principle, or any club, society, or association, or on account of himself or any other person having aided in securing the selection or indorsement of any other person as a nominee or candidate as aforesaid.

Every person who commits any of the offenses mentioned in this section is punishable by imprisonment in the state prison for not less than one nor more than seven years. En. Stats. 1905, 641.

54a. Section 20 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

§ 54*b*. Promising or contributing any money or valuable consideration for a person's voting or not voting. It is un-

lawful for any person, directly or indirectly, by himself or through any other person:

1. To pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons, or to induce such voter to come to the polls or remain away from the polls at such election, or on account of such voter having voted or refrained from voting, or having voted or refrained from voting for any particular person, or having come to the polls or remained away from the polls at such election;

2. To give, offer, or promise any office, place, or employment, or to promise to procure, or endeavor to procure, any office, place, or employment to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons;

3. To make any gift, loan, promise, offer, procurement, or agreement, as aforesaid, to, for, or with any person, in order to induce such person to procure, or endeavor to procure, the election of any person, or the vote of any voter at any election;

4. To procure, engage, promise, or endeavor to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement, the election of any person, or the vote of any voter at such election;

5. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used in bribery at any election; or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election;

6. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, ward, or district, with intent to secure the vote of such person, or to induce

such person to vote for any particular person or persons at any election;

7. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used to aid or assist any person to evade arrest, who is charged with the commission of a crime against the elective franchise, for which, if the person were convicted, the punishment would be imprisonment in the state prison;

8. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, in consideration of being selected or indorsed as the candidate of any convention, organized assemblage of delegates, or other body, representing, or claiming to represent, a political party or principle, or any club, society, or association, for a public office, or in consideration of the selection or indorsement of any other person as a candidate for a public office, or in consideration of any member of a convention, club, society, or association having voted to select or indorse any person as a candidate for a public office, except that a candidate for nomination to a public office may contribute such proportion of the cost and expense of holding a primary election as is authorized by the Political Code of this state, and no more;

9. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, in consideration of a person withdrawing as a candidate for a public office.

Every person who commits any of the offenses mentioned in this section is punishable by imprisonment in the state prison for not less than one year nor more than seven years. En. Stats. 1905, 642.

54b. Section 19 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

§ 55*a*. **Soliciting or demanding that a candidate vote for or against any measure or bill.** Any person, either individually or as an officer or member of any committee or association, who solicits or demands of any candidate for the legislature, supervisor, school director, or for any legislative body, that he shall vote for or against any particular bill or measure which may come before such body to which he may be elected, and any candidate for any of such offices who signs

or gives any pledge that he will vote for or against any particular bill or measure that may be brought before any such body, is guilty of a misdemeanor; and any candidate convicted under the provisions of this section is, in addition, disqualified from holding the office to which he may have been elected. The provisions of this section do not apply to any pledge or promise that any such candidate may give to a convention by which he may be nominated for any such office, or to those who sign a certificate for his nomination. En. Stats. 1905, 643.

55a. This is a codification of the statute of 1897 to protect candidates for public office (Stats. 1897, p. 53).—Code Commissioner's Note.

§ 57. **Giving or offering bribes to members of legislative caucus, etc.** Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison not less than one nor more than seven years. En. February 14, 1872. Am'd. 1905, 644.

57. The change consists in the insertion of the word "seven" in place of "fourteen," conforming the section to section 25 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

§ 57*a*. **Officers of election aiding in wrongdoing.** Every officer or clerk of election who aids in changing or destroying any poll-list or official ballot, or in wrongfully placing any ballots in the ballot-box, or in taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot-box, before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to

prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll-list, ballot-box, or ballots lawfully polled, is punishable by imprisonment in the state prison for not less than two nor more than seven years. En. Stats. 1905, 644.

57a. This is a codification of section 26 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

§ 59. Force, violence, or restraint used to influence vote. It is unlawful for any person, directly or indirectly, by himself or any other person in his behalf, to make use of, or threaten to make use of, any force, violence, or restraint, or to inflict or threaten the infliction, by himself or through any other person, of any injury, damage, harm, or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election, or on account of such person or persons at any election, or on account of such person having voted or refrained from voting at any election. And it is unlawful for any person, by abduction, duress, or any forcible or fraudulent device or contrivance whatever, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise by any voter; or to compel, induce, or prevail upon any voter either to give or refrain from giving his vote at any election, or to give or refrain from giving his vote for any particular person or persons at any election. It is not lawful for any employer, in paying his employés the salary or wages due them, to inclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate, or any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employés. Nor is it lawful for any employer, within ninety days of any election, to put up or otherwise exhibit in his factory, workshop, or other establishment, or place where his workmen or employés may be working, any hand-bill or placard containing any threat, notice, or information, that in case any particular ticket of a political party, or organization, or candidate shall be elected, work in his place or establishment will cease, in whole or in part, or his place or establishment be closed up, or the salaries or wages of his

workmen or employés be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employés. This section applies to corporations as well as individuals, and any person or corporation violating the provisions of this section is guilty of a misdemeanor, and any corporation violating this section shall forfeit its charter. En. February 14, 1872. **Am'd.** 1905, 644.

59. This is a codification of section 41 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

§ 62. **Violation of election laws as to tickets.** Every person who prints any ticket not in conformity with the provisions of chapter eight of title two of part three of the Political Code, or who circulates or gives to another any ticket, knowing at the time that such ticket does not conform to the provisions of chapter eight of title two of part three of the Political Code, is guilty of a misdemeanor. En. Stats. 1873-4, 456. **Am'd.** 1905, 645.

62. The change consists in the insertion of the words "the provisions of chapter eight of title two of part three," in place of "section one thousand one hundred and ninety-one." Section 1191 does not treat of the form of election ballots, and the reference is therefore inapplicable.—Code Commissioner's Note.

§ 63*b*. **Sale of intoxicants on election days.** Every person keeping a public house, saloon, or drinking place, whether licensed or unlicensed, who sells, gives away, or furnishes spirituous or malt liquors, wine, or any other intoxicant, on any part of any day set apart for any general or special election, in any election district or precinct in any county of the state where an election is in progress, during the hours when by law the polls are required to be kept open, is guilty of a misdemeanor. En. Stats. 1905, 645.

63b. This is a codification of the statute of 1873-4, page 297.—Code Commissioner's Note.

§ 70. Supp. Cal. Rep. Cit. 145, 638.

§ 72. Supp. Cal. Rep. Cit. 145, 105; 145, 109; 145, 110.

§ 74*a*. **Retaining part of salary.** Every officer of this state, or of any county, city and county, city, or township

therein, who accepts, keeps, retains or diverts for his own use or the use of any other person any part of the salary or fees allowed by law to his deputy, clerk, or other subordinate officer, is guilty of a felony. En. Stats. 1905, 646.

74a. This is a codification of the provisions of the statute of 1871-2, page 951, with the following changes: the word "accepts" is inserted in place of "keeps," and the phrase "for his own use" is added after "retains."—Code Commissioner's Note.

§ 76. **Refusal to surrender books to successor.** Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writings appertaining or belonging to his office, or mutilates, destroys or takes away the same, or willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, any money or property in his custody as such officer, is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872. **Am'd.** 1905, 646.

76. The change consists in the addition of the clause "or willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, any money or property in his custody as such officer." The section as it now stands makes it punishable only for an officer to retain writings or records appertaining or belonging to his office, but does not extend to the manifestly graver offense above noted.—Code Commissioner's Note.

§ 100. **Superintendent of state printing, penalty for collusion.** If the superintendent of state printing corruptly colludes with any person or persons furnishing paper or materials, or bidding therefor, or with any other person or persons, or has any secret understanding with him or them, by himself or through others, to defraud the state, or by which the state is defrauded or made to sustain a loss, contrary to the true intent and meaning of this chapter, he, upon conviction thereof, forfeits his office, and is subject to imprisonment in the state prison, for a term of not less than two years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and imprisonment. En. Stats. 1875-6, 19. **Am'd.** 1905, 647.

100. The change consists in the omission of the word "said" before "superintendent," the insertion of the word "chapter" in place of "act," and the omission of the phrase "in any court of competent jurisdiction," it being entirely unnecessary.—Code Commissioner's Note.

§ 105. Escapes from state prison, punishment of. Every prisoner confined in a state prison, for a term less than for life, who escapes therefrom, is punishable by imprisonment in a state prison for a term of not less than one year; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison. En. February 14, 1872. **Am'd.** 1880, 42; 1905, 723.

105. The present section is open to the objection that the punishment prescribed is unequal, not proportionate to the offense, and its constitutionality on that account has been sometimes doubted. The cases of State v. Lewin (Kan.), 37 Pac. Rep. 168; Barbier v. Connolly, 113 U. S. 27; Coon Hing v. Crowley, 113 U. S. 703; Hayes v. Missouri, 120 U. S. 68; Home Ins. Co. v. N. Y., 134 U. S. 594; Pembina Mng. Co. v. Penn., 125 U. S. 181; Crowley v. Christenson, 137 U. S. 86; Yick Wo v. Hopkins, 118 U. S. 358; Civil Rights Cases, 108 U. S. 3, are cited in behalf of this view. The amendment is strongly urged by the district attorney of Marin county.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 145, 664.

§ 109. Assisting prisoners to escape. Every person who willfully assists any prisoner confined in any prison or jail, or any inmate of any public training school or reformatory, or any person in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or jail, or public training school or reformatory, or custody, is punishable as provided in section one hundred and eight. En. February 14, 1872. **Am'd.** 1905, 647.

109. The amendment is designed to make it punishable to assist the escape of inmates of reformatories, and to accomplish this end the following insertions have been made: The words "or jail, or reformatory," the words "or any person," and the words "or jail, or public training school, or reformatory."—Code Commissioner's Note.

§ 110. Carrying into prison things useful to aid in escape. Every person who carries or sends into a prison, jail, public training school, or reformatory, anything useful to aid a prisoner or inmate in making his escape, with intent thereby to facilitate the escape of any prisoner or inmate confined there-

in, is punishable as provided in section one hundred and eight. En. February 14, 1872. **Am'd.** 1905, 647.

110. The change is in line with the proposed change in section 109. The words "jail, public training school, or reformatory" are inserted, and the words "or inmate" are added after "prisoner."—Code Commissioner's Note.

§ 111. Expense of trial for escape. Whenever a trial is had of any person under any of the provisions of sections one hundred and five and one hundred and six, and whenever a convict in the state prison is tried for any crime committed therein, the county clerk of the county where such trial is had must make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, and of the execution of the sentence of such convict, properly certified to by a judge of the superior court of such county, which statement must be sent to the board of state prison directors for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, to the county treasurer of the county where such trial was had. En. Stats. 1880, 9. **Am'd.** 1905, 774.

111. The change consists in the insertion of the words "and of the execution of the sentence of such convict," after "convict," and substitution of the words "judge of the superior court of such county" for "superior judge of said county." It is manifestly proper that the county should be recouped for the expenses covered by the amendment.—Code Commissioner's Note.

§ 118*a*. False affidavits as to affiant's testimony. Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false. En. Stats. 1905, 648.

118a. The object of this new section is to punish those who instigate litigation by making false affidavits respecting the facts to which they will testify, and is made necessary by the decision of the Supreme Court in People v. Simpton, 133 Cal. 367.—Code Commissioner's Note.

§ 119. **Oath defined.** The term "oath," as used in the last two sections, includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated. En., February 14, 1872. **Am'd.** 1905, 648.

119. The change consists in the substitution of the words "two sections" for "section." The change is made necessary by the addition of section 118a to the Code.—Code Commissioner's Note.

§ 121. **Irregularity in administering oath.** It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner, or that the person accused of perjury did not go before, or was not in the presence of, the officer purporting to administer the oath, if such accused caused or procured such officer to certify that the oath had been taken or administered. En. February 14, 1872. **Am'd.** 1905, 648.

121. The matter following the word "manner" is new. The object of the amendment is to cut off the defense sometimes successfully made in perjury cases, that the defendant did not in fact go before the officer and take oath, it being at the same time admitted that he sent the affidavit to the officer with the intention that he should certify to it, and with the intention that it should be used as valid.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 139, 601.

§ 124. **Deposition, when deemed to be complete.** The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true. En. February 14, 1872. **Am'd.** 1905, 648.

124. The change consists in the addition of the word "affidavit." The purpose is of the same character as that of the amendment to the preceding section.—Code Commissioner's Note.

§ 129. **False return under oath, whether oath is taken or not.** Every person who, being required by law to make any return, statement, or report, under oath, willfully makes

and delivers any such return, statement, or report, purporting to be under oath, knowing the same to be false in any particular, is guilty of perjury, whether such oath was in fact taken or not. En. Stats. 1905, 649.

129. The object of the section is similar to that of the proposed amendment to section 121. (See People v. Simpton, 133 Cal. 367.)—Code Commissioner's Note.

§ 159½. Number changed to 159*a*. See § 159*a*, post.

§ 159*a*. **Advertising to procure divorce.** Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage or appear or act as attorney, counsel, or referee in any suit for alimony or divorce, or the severance, dissolution, or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section does not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state. En. Stats. 1891, 279. Am'd. 1893, 48; 1905, 649.

159a (159½). The change consists in the substitution of the word "annulment" for "nullity," and the substitution of "section" for "act."—Code Commissioner's Note.

§ 161. Supp. Cal. Rep. Cit. 143, 527.

§ 161*a*. **Falsely advertising as an attorney.** Any person, other than a regularly licensed attorney, who advertises or holds himself out as practicing or entitled to practice law in any court of record, is guilty of a misdemeanor. En. Stats. 1905, 649.

161a. This section, which is a new one, is self-explanatory.—Code Commissioner's Note.

§ 165. **Bribing boards of supervisors, etc.** Every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city and county, city, or public corporation,

with intent to corruptly influence such member in his action on any matter or subject pending before, or which is afterward to be considered by, the body of which he is a member, and every member of any of the bodies mentioned in this section who receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter, upon which he may be required to act in his official capacity, is punishable by imprisonment in the state's prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised and forever disqualified from holding any public office or trust. En. February 14, 1872. Am'd. 1905, 650.

165. The word "public" is inserted before the word "corporation," as the section was undoubtedly intended to apply to bodies and authorities of a public character. The words "of which is afterward to be considered by" are inserted. The words "upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter, upon which he may be required to act in his official capacity," were not in the report of the original Code Commission, but were inserted as a committee amendment two years ago. The added words "in addition to said punishment" were likewise inserted by said committee. The first two changes are code revision; the last two changes are, in a measure, new legislation, but we think them good.—Code Commissioner's Note.

§ 168. Disclosing fact of indictment having been found. Every grand juror, district attorney, clerk, judge or other officer who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of an information or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 650.

168. "Presentment" is stricken out and "information" inserted in its place, for the reason that under the Constitution of 1879 there is no prosecution by presentment, that portion of this section (originally passed in 1872) having been superseded by the Constitution.—Code Commissioner's Note.

§ 171. Unauthorized communication with convict. Every person, not authorized by law, who, without the permission of the warden or other officer in charge of any state

prison, jail, or reformatory in this state, communicates with any convict or person detained therein, or brings therein or takes therefrom any letter, writing, literature, or reading matter to or from any convict or person confined therein, is guilty of a misdemeanor. En. February 14, 1872. **Am'd.** 1905. 651.

171. The scope of the section is broadened by the insertion of the words "jail or reformatory in this state," and the words "literature or reading matter."—Code Commissioner's Note.

§ 171*a*. **Bringing certain drugs or firearms into or near prisons.** Any person, not authorized by law, who brings into any state prison, jail, or reformatory in this state, or within the grounds belonging or adjacent to any such institution, any opium, morphine, cocaine, or other narcotic, or any intoxicating liquor of any kind whatever, or any firearms, weapons or explosives of any kind, is guilty of a felony. En. Stats. 1905, 651.

171a, 171b, 171c, 180a. Sections 171a, 171b, and 171c contain the matter now contained in section 180a, and also a codification of the provisions of the statute of 1895, page 92.—Code Commissioner's Note.

§ 171*b*. **Ex-convicts coming upon or near prison grounds.** Every person who, having been previously convicted of a felony and confined in any state prison in this state, without the consent of the warden or other officer in charge of any state prison or reformatory in this state, comes upon the grounds of any such institution, or lands belonging or adjacent thereto, in the night-time, is guilty of a felony. En. Stats. 1905, 651.

See note to § 171*a*, ante.

§ 171*c*. **Tramp, vagrant, etc., coming into prison or upon grounds belonging thereto.** Any tramp, vagrant, or person who is a known associate of thieves, who comes into any state reformatory in this state, or upon the grounds belonging or adjacent thereto, and communicates with any of the inmates of such institution, without the consent of the superintendent or other person having charge thereof, or who visits or communicates with any paroled pupil or inmate of such institution, with a view to induce him to violate the conditions of his parole, or who induces such paroled pupil or inmate to leave the guardian under whom he has been

placed by the superintendent or other head of such institution, is guilty of a misdemeanor. En. Stats. 1905, 651.

See note to § 171*a*, ante.

§ 172. Keeping intoxicating liquors within or contiguous to state buildings. Every person who, within two miles of the land belonging to this state upon which any state prison or reformatory is situated, or within one mile of the grounds belonging and adjacent to the University of California, or within one and one half miles of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers or sailors established or to be established by this state or by the United States within this state, or within the state capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor. En. February 14, 1872. **Am'd.** 1875-6, 109; 1905, 652.

172. The amendment consolidates the provisions of the present section 172 with a codification of the statutes of 1873-4, page 12; 1880, page 80, and 1895, page 161, relating to the state university, soldiers' homes, and state capitol. There is no new legislation in the section.—Code Commissioner's Note.

§ 178. En. Stats. 1880, 1. Rep. 1905, 652.

178, 179. These sections were, in the Circuit Court of the United States, Ninth Judicial District, explicitly held to be in violation of the Constitution of the United States, on May 22, 1880. (In re Parrott, 5 Pac. Coast L. J. 161.) They are now obsolete. An ordinance in somewhat similar terms was also held unconstitutional in Ex parte Kerboch, 85 Cal. 274.—Code Commissioner's Note.

§ 179. En. Stats. 1880, 2. Rep. 1905, 652.

See note to § 178, ante.

§ 180*a*. En. Stats. 1899, 4. **Am'd.** 1901, 107. Rep. 1905, 652.

See note to § 171*a*, ante.

§ 187. Supp. Cal. Rep. Cit. 142, 341; 142, 356; 145, 170; 145, 171.

§ 188. Supp. Cal. Rep. Cit. 139, 164; 145, 170.

§ 189. Supp. Cal. Rep. Cit. 141, 231; 145, 170.

§ 192. Supp. Cal. Rep. Cit. 145, 721.

§ 197. Supp. Cal. Rep. Cit. 141, 239.

§ 207. **Kidnaping defined.** Every person who forcibly steals, takes, or arrests any person in this state, and carries him into another country, state, or county, or into another part of the same county, or who forcibly takes or arrests any person, with a design to take him out of this state, without having established a claim, according to the laws of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person; and every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state, and is afterwards found within the limits thereof, is guilty of kidnaping. En. February 14, 1872. Am'd. 1905, 653.

207. Two amendments: inserting the words "or into another part of the same county," and inserting beginning with the word "and" and ending with the word "thereof." The advisability of the first change is shown by the decision of the Supreme Court in Ex parte Keil, 85 Cal. 309, where it was held that the forcible removal of a person from San Pedro, Los Angeles county, to Santa Catalina island, in the same county, did not constitute kidnaping. These changes are asked for by the District Attorneys' Association.—Code Commissioner's Note.

§ 211. Supp. Cal. Rep. Cit. 141, 490; 141, 491; 141, 492.

§ 214. **Robbery; going upon railroad trains, or doing any act thereof, for the purpose of.** Every person who goes upon or boards any railroad train, car or engine, with the intention of robbing any passenger or other person on such train, car or engine, of any personal property thereon in the possession or care or under the control of any such passenger or other person, or who interferes in any manner with any switch, rail, sleeper, viaduct, culvert, embankment, structure or appliance pertaining to or connected with any railroad, or

places any dynamite or other explosive substance or material upon or near the track of any railroad, or who sets fire to any railroad bridge or trestle, or who shows, masks, extinguishes or alters any light or other signal, or exhibits or compels any other person to exhibit any false light or signal, or who stops any such train, car or engine, or slackens the speed thereof, or who compels or attempts to compel any person in charge or control thereof to stop any such train, car or engine, or slacken the speed thereof, with the intention of robbing any passenger or other person on such train, car or engine, of any personal property thereon in the possession or charge or under the control of any such passenger or other person, is guilty of a felony. En. Stats. 1905, 653.

214, 218, 219. Section 218 has been broken up into three sections. In view of the criticism passed by the Supreme Court in the case of People v. Thompson, 111 Cal. 242, upon section 218, and the suggestion of that court that the section be revised, there have been taken out of that section the provisions regarding robbery and the same have been amplified and made a new section, numbered 214, to be placed in Chapter IV, of Title VII, of Part I. In the new section the punishment is not prescribed as death or imprisonment for life at the option of the jury, as in section 218; but the grade of the offense is fixed at felony simply, it having been found that the severity of the punishment results in failure to secure convictions.

Section 218 as amended provides only for attempted wrecking or derailment of railroad trains, and fixes the grade of the offense as felony simply, the matters formerly in the section regarding an accomplished or consummated wrecking or derailment being left to section 219, and the provisions regarding robbery being provided for in section 214.

Section 219 contains the matter now in section 218 regarding an accomplished or consummated wrecking or derailment. The punishment is left at death or imprisonment for life, at the option of the jury, as now provided in section 218.

In short, these three sections split up section 218 in the manner suggested by Judge Garoutte in People v. Thompson, 111 Cal. 242, and modify the penalty of train-wrecking where no death has occurred, so as to preclude failures to convict on account of the severity of the penalty.—Code Commissioner's Note.

§ 218. Train-wrecking, intention of, punishment for. Every person who unlawfully throws out a switch, removes a rail, or places any obstruction on any railroad with the intention of derailing any passenger, freight or other train, car or engine, or who unlawfully places any dynamite or other explosive material or any other obstruction upon or

near the track of any railroad with the intention of blowing up or derailing any such train, car or engine, or who unlawfully sets fire to any railroad bridge or trestle, over which any such train, car or engine must pass, with the intention of wrecking such train, car or engine, is guilty of a felony. En. Stats. 1891, 283. **Am'd.** 1905, 654.

See note to § 214, ante.

§ 219. **Railroad trains, when wrecked; punishment.** Every person who unlawfully throws out a switch, removes a rail, or places any obstruction on any railroad with the intention of derailing any passenger, freight or other train, car or engine and thus derails the same, or who unlawfully places any dynamite or other explosive material or any other obstruction upon or near the track of any railroad with the intention of blowing up or derailing any such train, car or engine and thus blows up or derails the same, or who unlawfully sets fire to any railroad bridge or trestle over which any such train, car or engine must pass with the intention of wrecking such train, car or engine, and thus wrecks the same, is guilty of a felony and punishable with death or imprisonment in the state prison for life at the option of the jury trying the case. En. Stats. 1905, 655.

See note to § 214, ante.

§ 220. Supp. Cal. Rep. Cit. 143, 634.

§ 240. Supp. Cal. Rep. Cit. 145, 140.

§ 245. Supp. Cal. Rep. Cit. 141, 582.

§ 248. Supp. Cal. Rep. Cit. 139, 119.

§ 261. Supp. Cal. Rep. Cit. 143, 317.

§ 263. Supp. Cal. Rep. Cit. 143, 317.

§ 266*a*. **Taking female for purpose of prostitution.** Every person who, within this state, takes any female person against her will and without her consent, or with her consent procured by fraudulent inducement or misrepresentation, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and

a fine not exceeding one thousand dollars. En. Stats. 1905, 655.

266a, 266b, 266c, 266d, 266e, 266f. The statute of 1893, page 217, regarding the compulsory prostitution of women, is codified in the above-named sections. The penalties here set forth in sections 266d, 266e, and 266f, are those of a felony instead of the various penalties set forth in the corresponding sections of the statute codified.—Code Commissioner's Note.

§ 266b. Taking a female by force, duress, etc., to live in an illicit relation. Every person who takes any female person unlawfully, and against her will, and by force, menace, or duress, compels her to live with him in an illicit relation, against her consent, or to so live with any other person, is punishable by imprisonment in the state prison not less than two nor more than four years. En. Stats. 1905, 655.

See note to § 266*a*, ante.

§ 266c. Bringing or landing Chinese or Japanese women for the purpose of selling. Every person bringing to, or landing within this state, any female person born in the empire of China or the empire of Japan, or the islands adjacent thereto, with intent to place her in charge or custody of any other person, and against her will to compel her to reside with him, or for the purpose of selling her to any person whomsoever, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months. En. Stats. 1905, 656.

See note to § 266*a*, ante.

§ 266d. Placing female in custody for the purpose of cohabitation. Any person who receives any money or other valuable thing for or on account of his placing in custody any female for the purpose of causing her to cohabit with any male to whom she is not married, is guilty of a felony. En. Stats. 1905, 656.

See note to § 266*a*, ante.

§ 266e. Paying for female for the purpose of prostitution. Every person who purchases, or pays any money or other valuable thing for, any female person for the purpose of prostitution, or for the purpose of placing her, for im-

moral purposes, in any house or place against her will, is guilty of a felony. En. Stats. 1905, 656.

See note to § 266*a*, ante.

§ 266*f*. **Selling female for immoral purposes.** Every person who sells any female person or receives any money or other valuable thing for or on account of his placing in custody, for immoral purposes, any female person, whether with or without her consent, is guilty of a felony. En. Stats. 1905, 656.

See note to § 266*a*, ante.

§ 266*g*. **Placing or permitting the placing of one's wife in house of prostitution.** Every man who, by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at or consents to, or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony and punishable by imprisonment in the state prison for not less than three nor more than ten years; and in all prosecutions under this section a wife is a competent witness against her husband. En. Stats. 1905, 656.

266g. This section codifies the statute of 1891, page 285, regarding the placing and keeping of married women in houses of prostitution.—Code Commissioner's Note.

§ 267. Supp. Cal. Rep. Cit. 141, 544; 141, 545; 141, 548.

§ 268. Supp. Cal. Rep. Cit. 143, 101.

§ 269*a*. **Open and notorious fornication and adultery.** Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both. En. Stats. 1905, 657.

269a, 269b. The act to punish adultery (Stats. 1871-2, page 380) is codified in the two sections above named.—Code Commissioner's Note.

§ 269*b*. **Open and notorious adultery of married persons; proof.** If two persons, each being married to another, live

together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and punishable by imprisonment in the state prison not exceeding five years. A recorded certificate of marriage or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this section. En. Stats. 1905, 657.

See note to § 269*a*, ante.

§ 270. **Omitting to provide food and shelter.** A parent who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his child, is guilty of a misdemeanor. En. February 14, 1872. **Am'd.** 1905, 758.

270. The change consists in the omission of the words now following the word "excuse," "to perform any duty imposed upon him by law." They are clearly without signification as employed in the section.—Code Commissioner's Note.

§ 271*a*. **Penalty for abandonment.** Every person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of fourteen years, or who falsely, knowing the same to be false, represents to any manager, officer, or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into such asylum or institution application is made is an orphan, is guilty of a misdemeanor. En. Stats. 1905, 758.

271a. The penal section of the statute of 1873-4, relating to the care of orphan and abandoned children, is codified in this section.—Code Commissioner's Note.

§ 272. **Person selling, apprenticing, etc., children.** Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody, or control of any child under the age of sixteen years, who exhibits, uses, or employs, or in any manner, or under any pretense, sells, apprentices, gives away, lets out, or disposes of any such child to any person, under any name, title, or pretense, for or in any business, exhibition, or vocation, injurious to the health or dangerous to the life or limb of such child, or in or for the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortion-

ist, or rider, in any place whatsoever, or for or in any obscene, indecent or immoral purposes, exhibition, or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or who causes, procures, or encourages such child to engage therein, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to or affects the employment or use of any such child, as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music; or the employment of any child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the city or town where such concert or entertainment takes place. En. Stats. 1875-6, 110. **Am'd.** 1905, 759.

272, 273, 273a, 273b, 273c, 273d. The two statutes, one of 1877-8, page 812, and the other of 1877-8, page 813, relating to children, are codified by an amendment to section 272, and by the addition of sections 273, 273a, 273b, 273c, and 273d.—Code Commissioner's Note.

§ 273. **Person receiving, hiring, etc., children.** Every person who takes, receives, hires, employs, uses, exhibits, or has in custody, any child under the age, and for any of the purposes mentioned in the preceding section, is guilty of a like offense, and punishable by a like punishment as therein provided. En. Stats. 1905, 759. [March 22, 1905.]

See note to § 272, ante.

At the same session of the legislature another section 273 was adopted as follows:

§ 273. **Minor not to visit saloons, etc.** Any person whether as parent, guardian, employer, or otherwise, and any firm or corporation, who as employer or otherwise, shall send, direct, or cause to be sent or directed to any saloon, gambling house, house of prostitution, or other immoral place, any minor under the age of eighteen years, is guilty of a misdemeanor. En. Stats. 1905, 74. [March 7, 1905.]

§ 273*a*. **Unjustifiable punishment, causing child to suffer.** Any person who willfully causes or permits any child to suf-

fer, or who inflicts thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, causes or permits the life or limb of such child to be endangered, or the health of such child to be injured, and any person who willfully causes or permits such child to be placed in such situation that its life or limb may be endangered, or its health likely to be injured, is guilty of a misdemeanor. En. Stats. 1905, 759.

See note to § 272, ante.

§ 273*b*. **Child not to be confined.** No child under the age of sixteen years must be placed in any prison, or place of confinement, or in any courtroom, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official. En. Stats. 1905, 760.

See note to § 272, ante.

§ 273*c*. **Fines, how appropriated.** All fines, penalties, and forfeitures imposed and collected under the provisions of the five preceding sections, or under the provisions of any law relating to, or affecting, children, in every case where the prosecution is instituted or conducted by a society incorporated under the laws of this state for the prevention of cruelty to children, inure to such society in aid of the purposes for which it is incorporated. En. Stats. 1905, 760.

See note to § 272, ante.

§ 273*d*. **Court may commit child to charitable institution.** When, upon examination before a court or magistrate, it appears that any child under the age of sixteen years has been found begging, whether actually begging or under the pretext of selling anything, or wandering and not having any settled place of abode, or proper guardianship, or visible means of subsistence; or destitute, or frequenting the company of reputed thieves, or prostitutes or houses of prostitution or assignation, dance houses, concert saloons, theaters, or places where spirituous liquors are sold; or engaged in any business, exhibition, or vocation mentioned in section two hundred and seventy-two; or in the custody of any person convicted of a criminal assault upon it; the court or magistrate may, when it deems it expedient for the welfare of

such child, commit it to an orphan asylum, society for the prevention of cruelty to children, or other charitable institution, or make such other disposition thereof as now is or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. En. Stats. 1905, 760.

See note to § 272, ante.

§ 273e. **Minor not to deliver messages, etc., to certain places.** Every telephone, special delivery company or association, and every other corporation or person engaged in the delivery of packages, letters, notes, messages, or other matter, and every manager, superintendent, or other agent of such person, corporation, or association, who sends any minor in the employ or under the control of any such person, corporation, association, or agent, to the keeper of any house of prostitution, variety theater, or other place of questionable repute, or to any person connected with, or any inmate of, such house, theater, or other place, or who permits such minor to enter such house, theater, or other place, is guilty of a misdemeanor. En. Stats. 1905, 760.

273e. The matter now in section 1389, which incorrectly stands in a chapter entitled "Dismissal of the Action," is put into a new section designated as 273e, and is put in its proper chapter, with the other sections relative to children, and section 1389 accordingly repealed.—Code Commissioner's Note.

§ 274. Supp. Cal. Rep. Cit. 143, 261.

§ 283. **Bigamy, punishment of.** Bigamy is punishable by fine not exceeding five thousand dollars and by imprisonment in the state prison not exceeding ten years. En. February 14, 1872. **Am'd.** 1905, 245.

§ 284. **Marrying a husband or wife of another, punishment.** Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than five thousand dollars, or by imprisonment in the state prison not exceeding ten years. En. February 14, 1872. **Am'd.** 1905, 245.

§ 285. Supp. Cal. Rep. Cit. 141, 606; 141, 607; 141, 609; 142, 622.

§ 288. Supp. Cal. Rep. Cit. 142, 147; 142, 151.

§ 292. Supp. Cal. Rep. Cit. 140, 233.

§ 297. Supp. Cal. Rep. Cit. 140, 233.

§ 302. **Disturbing religious meetings.** Every person who willfully disturbs or disquiets any assemblage of people met for religious worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor. En. February 14, 1872. **Am'd.** 1905, 657.

302. The change consists in the omission of the word "noise" before the word "profane," it being manifestly an error in the statute, as it occurs later in the section with a qualification.—Code Commissioner's Note.

§ 303. En. February 14, 1872. Rep. 1905, 657.

303. The section is in conflict with section 18 of Article XX of the Constitution, which provides that "no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession." (See Ex parte Maguire, 57 Cal. 604.)—Code Commissioner's Note.

§ 306. En. February 14, 1872. **Am'd.** 1873-4, 459; 1873-4, 460. Rep. 1905, 658.

306. This section is explicitly held to be in conflict with section 18 of Article XX of the Constitution in Ex parte Maguire, 57 Cal. 604, 609.—Code Commissioner's Note.

§ 310½. En. Stats. 1895, 247. Rep. 1905, 658.

310½. This section was explicitly held to be unconstitutional in Ex parte Jentzsck, 112 Cal. 468.—Code Commissioner's Note.

§ 315. **Keeping or residing in house of ill-fame; proof.** Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it. En. February 14, 1872. **Am'd.** 1905, 668.

315. The change consists in the addition of the matter following the semicolon. The new matter is taken from the statute of 1873-4, page 84, and makes the reputation of the house evidence of its character and of that of the women resorting to it.—Code Commissioner's Note.

§ 343. Refusing to allow inspection of register of pledged articles. Every pawnbroker who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, or appointed by the sheriff of the county or the head of the police department of any city, city and county, or town to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor. En. February 14, 1872. **Am'd.** 1905, 668.

343. The change consists in the insertion, after the word "sales," of the words "or appointed by the sheriff of the county, or the head of the police department of any city, city and county, or town, to inspect such registry, or examine such articles on account of sales." The change is suggested and advocated by the sheriffs' organization of this state.—Code Commissioner's Note.

§ 347*a*. Poisonous substance, how sold and labeled; to whom sold; entry of sale to be made; penalty; prescriptions excepted. No person must retail any arsenic, corrosive sublimate, hydrocyanic acid, cyanide of potassium, strychnia, essential oil of bitter almonds, opium, aconite, belladonna, conium, nux vomica, henbane, tansy, savin, ergot, cottonroot, digitalis, chloroform, chloral hydrate, or any preparation, compound, salt, extract or tincture, of such substances, except preparations of opium containing less than two grains to the fluid ounce, white precipitate, red precipitate, red and green iodides of mercury, colchicum, cantharides, oxalic acid, croton oil, sulphate of zinc, sugar of lead, carbolic acid, sulphuric acid, muriatic acid, nitric acid, phosphorus, or any preparation, compound, salt, extract, or tincture, of such substances, without first distinctly labeling the bottle, box, vessel, or package, and the wrapper or cover thereof in which such substance is contained, with the common or usual name thereof, together with the word "poison," and the name and place of business of the seller. Nor must any such sale be made to any person, unless it is found, on due

inquiry, that he is aware of its poisonous character, and that it is to be used for a legitimate purpose. Nor must any person retail any of such substances, unless, before delivering the same, he makes, or causes to be made, in a book kept for that purpose only, an entry stating the date of the sale, the name and address, of the purchaser, the name and quantity of the substance sold, the purpose for which it is stated by the purchaser to be required, and the name of the dispenser. Such book must always be open to inspection by the proper authorities. A person dispensing any of the substances enumerated must ascertain, by due inquiry, whether the name and address given by the person receiving the same are his true name and address, and for that purpose may require such person to be identified. Every person who violates any of the provisions of this section is guilty of a misdemeanor, and punishable by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to the prescriptions of any physician authorized to practice medicine under the laws of this state. En. Stats. 1905, 765.

347a. This is a codification of the existing statute (1880, page 102).—Code Commissioner's Note.

§ 349*a*. Frauds in stamping and labeling produce and manufactured goods. Any person engaged in the production, manufacture, or sale of any article of merchandise made in whole or in part in this state, who, by any imprint, label, trademark, tag, stamp, or other inscription or device, placed or impressed upon such article, or upon the cask, box, case, or package containing the same, misrepresents or falsely states the kind, character, or nature of the labor employed or used, or the extent of the labor employed or used, or the number or kind of persons exclusively employed or used, or that a particular or distinctive class or character of laborers was wholly and exclusively used or employed, when, in fact, another class, or character, or distinction of laborers was used or employed, either jointly or in anywise supplementary to such exclusive class, character, or distinction of laborers, in the production or manufacture of the article to which such imprint, label, trademark, tag, stamp, or other inscription or device is affixed, or upon the cask, box, case, or package containing the same, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than five

hundred dollars, or by imprisonment in the county jail for not less than twenty nor more than ninety days, or both. En. Stats. 1905, 669.

349a. This is a codification of the statute of 1877-8, page 17.—Code Commissioner's Note.

§ 357. Supp. Cal. Rep. Cit. 144, 47; 145, 111.

§ 360. **Performing marriage ceremony before license is presented; failure to record license and marriage certificate; false record of marriage return.** Every person authorized to solemnize any marriage, who solemnizes such marriage without first being presented with the marriage license, as required by section seventy-two of the Civil Code of this state, or who willfully makes a false return of any marriage or pretended marriage to the recorder; or who, having solemnized a marriage, fails for more than thirty days, to file with such recorder the marriage license with the certificate endorsed thereon, as required by sections seventy-three and seventy-four of the Civil Code of this state; and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section. En. February 14, 1872. **Am'd.** 1905, 669.

360. The change consists of the clause making it criminal to solemnize a marriage without being first presented with a marriage license, and the clause making it criminal to fail to file for record the marriage license and the certificate of marriage. The last of these amendments, besides being otherwise proper, is necessary in order to give effect to the amendment to section 79a of the Civil Code, which provides that a license must be procured in every case, and regardless of whether the parties are, or are not, members of some particular religious denomination having, as such, some peculiar mode of celebrating marriage.—Code Commissioner's Note.

§ 367*a*. **Unauthorized use of dramatic or musical compositions.** Any person who causes to be publicly performed or represented for profit any unpublished or undedicated dramatic composition or dramatic-musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished or undedicated, and without the consent of its owner or proprietor, permits, aids, or takes part in such a performance or representation, or who sells a copy or a substantial copy of any unpublished, undedicated or copyrighted

dramatic composition or musical or dramatic-musical composition, known as an opera, without the consent of the author or proprietor of such dramatical or dramatic-musical composition shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty (50) dollars, and not more than three hundred (300) dollars, or be imprisoned for not less than thirty (30) days or more than three (3) months, or both such fine and imprisonment. En. Stats. 1905, 248.

§ 369*a*. **Street-cars and dummies to be supplied with proper brakes and fenders.** Any person, company, or corporation, operating cars on the streets of cities or towns, or on the county roads within the state, for the conveyance of passengers, propelled by means of wire ropes attached to stationary engines, or by electricity or compressed air, who runs, operates, or uses any car or dummy, unless each car and dummy, while in use, is fitted with a brake capable of bringing such car to a stop within a reasonable distance, and a suitable fender, or appliance placed in front or attached to the trucks of such dummy or car, for the purpose of removing and clearing obstructions from the track, and preventing any obstacles, obstructions, or person on the track from getting under such dummy or car, and removing the same out of danger, and out of the way of such dummy or car, is guilty of a misdemeanor. Where the board of supervisors of any county, or the city council or other governing body of any city, by ordinance, order, or resolution, prescribes the fender or brake to be used as aforesaid, then a compliance with such ordinance, order, or resolution must be deemed a full compliance with the provisions of this section. En. Stats. 1905, 766.

369a. This is a codification of the statute of 1899, page 183.—Code Commissioner's Note.

§ 369*b*. **Railroad companies transporting cattle, etc., confined in cars longer than a certain time without unloading and feeding; charges a lien upon animals.** Any officer, agent or conductor of any company or person operating any railroad in this state, who in carrying and transporting cattle, sheep, or swine in carload lots, confines the same in cars for a longer period than thirty-six consecutive hours, without unloading for rest, water and feeding, for a period of at

least ten consecutive hours, is guilty of a misdemeanor. In estimating such time of confinement, the period during which the animals have been confined without such rest on connecting roads from which they are received, must be computed. In case the owner or person in charge of such animals refuses or neglects to pay for the care and feed of animals so rested, the company or person operating such railroad may charge the expense thereof to the owner or consignee and retain a lien upon the animals therefor until the same is paid. En. Stats. 1905, 672.

369b. This is a codification of the statute of 1877-8, page 969.—Code Commissioner's Note.

§ 369*d*. **Closing of gates at railroad crossings.** Any person who enters upon or crosses any railroad, at any private passway, which is inclosed by bars or gates, and neglects to leave the same securely closed after him, is guilty of a misdemeanor. En. Stats. 1905, 766.

369d, 369e, 369f, 369g. Codification of police regulations in the statute of 1877-8, page 969.—Code Commissioner's Note.

§ 369*e*. **Animals feeding along railroad tracks.** Any person who leads, drives, or conducts any beast along the track of a railroad, except where the railroad is built within the limits of a public highway, or who places, or having the right to prevent it, suffers any animal to be placed within the fences thereof for grazing or other purposes, is guilty of a misdemeanor. En. Stats. 1905, 767.

See note to § 369*d*, ante.

§ 369*f*. **Railroad employé intoxicated while on duty.** Any person employed upon any railroad as engineer, conductor, baggage-master, brakeman, switchman, fireman, bridge-tender, flagman, or signalman, or having charge of the regulation or running of trains upon such railroad, in any manner whatever, who becomes or is intoxicated while engaged in the discharge of his duties, is guilty of a misdemeanor; and if any person so employed as aforesaid, by reason of such intoxication, does any act, or neglects any duty, which act or neglect causes the death of, or bodily injury to, any person or persons, he is guilty of a felony. En. Stats. 1905, 767.

See note to § 369*d*, ante.

§ 369*g*. Driving vehicles along track of railroad. Any person who rides, drives, or propels any vehicle upon and along the track of any railroad, through or over its private right of way, without the authorization of its superintendent or other officer in charge thereof, is guilty of a misdemeanor. En. Stats. 1905, 767.

See note to § 369*d*, ante.

§ 374. Deposit of dead animals in streets, rivers, etc. Every person who puts the carcass of any dead animal, or the offal from any slaughter-pen, corral, or butcher shop, into any river, creek, pond, reservoir, stream, street, alley, public highway, or road in common use, or who attempts to destroy the same by fire within one fourth of a mile of any city, town, or village, except it be in a crematory, the construction and operation of which is satisfactory to the board of health of such city, town, or village; and every person who puts any water-closet or privy, or the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of the inhabitants of any city, city and county, or any town in this state, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake or reservoir; or who allows any water-closet or privy, or carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live stock of any kind, penned, corraled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof become polluted by reason thereof; or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the waters of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven. En. February 14, 1872. Am'd. 1875-6, 111; 1893, 66; 1905, 767.

374. The change consists in the substitution of the word "crematory" for "cemetery."—Code Commissioner's Note.

§ 375*a*. **Record of sale of explosives.** It is the duty of each and every person, association, joint stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or using, or giving out nitro-glycerine, dynamite, vigorite, hercules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as it is made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance. Such journal or record book must show, in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser, or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient for identification. Such journal or record book must be kept by the person, firm, association, joint stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance, or substances, in his or their principal office or place of business at all times subject to the inspection and examination of the peace officers, or other police authorities of the state, county, or municipality where the same is situated, on proper demand made therefor. Any failure or neglect to keep such book, or to make the proper entries therein at the time of the transaction, as herein provided, or to exhibit the same to the peace officers or other police authorities on demand, is deemed a misdemeanor, and punishable accordingly. In addition to such punishment, and as a cumulative penalty, such person, firm, association, joint stock company, or corporation so offending, shall forfeit, for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction. The party instituting an action for such forfeiture shall not be entitled to dismiss the same without consent of the court before which the suit has been instituted. Nor shall any judgment recovered be

settled, satisfied, or discharged, save by order of such court, after full payment into court, and all moneys so collected must be paid to the party bringing the suit. En. Stats. 1905, 768.

375a. This is a codification of sections 1, 2, 3, and 4 of the statute of 1887, page 110.—Code Commissioner's Note.

§ 376. Violation of quarantine laws by master of vessel. Every master of a vessel subject to quarantine or visitation by the quarantine officer, who refuses or omits:

1. To proceed with and anchor his vessel at the place assigned for quarantine, at the time of his arrival;

2. To submit his vessel, cargo, and passengers to the examination of the quarantine officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or,

3. To remain with his vessel at the quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any health officer, by virtue of authority given him by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew;

Is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both. En. February 14, 1872. Am'd. 1877-8, 116; 1905, 769.

376. The change consists in the omission after the word "officer," of the words "arriving in the port of San Francisco," thus making the statute general.—Code Commissioner's Note.

§ 377*a*. State board of health, violation of rules of, relating to quarantine, etc. Every person who after notice shall violate, or who, upon the demand of any public health officer, shall refuse or neglect to conform to any rule, order or regulation prescribed by the state board of health respecting the quarantine, or disinfection of persons, animals, things, or places, shall be guilty of a misdemeanor. En. Stats. 1905, 143.

§ 377*b*. State board of health, violation of rules of, relating to pollution of water. Any person who shall violate or refuse or neglect to conform to any sanitary rule, order

or regulation prescribed by the state board of health for the prevention of the pollution of springs, streams, rivers, lakes, wells, or other waters used or intended to be used for human or animal consumption shall be guilty of a misdemeanor. En. Stats. 1905, 138.

§ 377*c*. **State board of health, violation of rules of, relating to pollution of ice.** Any person who shall violate, or refuse, or neglect, to conform to any sanitary rule, order, or regulation prescribed by the state board of health for the prevention of the pollution of ice or the sale or disposition of polluted ice offered, kept or intended for public use or consumption, shall be guilty of a misdemeanor. En. Stats. 1905, 138.

§ 381*b*. **State dairy bureau.** It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of section three hundred and eighty-one *a* of the Penal Code and cause the prosecution of persons whom it knows, or has reason to believe, are guilty of violating the provisions of said section of the Penal Code. It shall be the duty of the district attorney of each and every county in the state to attend to the prosecution of all persons within his district against whom the state dairy bureau shall enter complaint for violating the provisions of said section of the Penal Code. Said state dairy bureau shall from time to time inspect and examine as to their accuracy, or their adaptability to give accurate results, all glassware, measures, scales, weights and other apparatus used in creameries, and factories of dairy products where milk and cream are purchased, to determine the amount or percentage of fat in milk or cream. Said state dairy bureau shall supply at cost, and not oftener than once a year, to every creamery, or other factory of dairy products where milk and cream, or either, are purchased, upon application not more than two tubes or bottles and one pipette of the forms used with the Babcock test, which it shall first examine as to accuracy, and if accurate, or adapted to give accurate results under the usual method of operating the Babcock test, said state dairy bureau shall certify to this by marking durably and permanently upon each and every piece of apparatus supplied the letters "D. B." Said state dairy bureau shall also upon payment at the rate of one

dollar for each dozen, test or examine into the accuracy of all test bottles or tubes and pipettes sent to it direct from any creamery, or other factory of dairy products where milk or cream are purchased, and if found accurate, or adapted to give accurate results, the letters "D. B." shall be marked upon each piece of apparatus examined. The state dairy bureau shall pay all money received for making such tests for examinations into the state treasury and the same shall become a part of the appropriation for the use of the state dairy bureau and its disposition shall be at the disposal of the state dairy bureau in enforcing the provisions of this act. En. Stats. 1905, 168.

§ 383. Sale of adulterated or tainted food, or drink or drug; "drug," "food" defined. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same is adulterated or has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drunk, with intent to permit the same to be eaten or drunk, is guilty of a misdemeanor, and must be fined not less than twenty-five nor more than one hundred dollars, or imprisoned in the county jail not exceeding one hundred days, or both, and may, in the discretion of the court, be adjudged to pay, in addition, all the necessary expenses, not exceeding fifty dollars, incurred in inspecting and analyzing such articles. The term "drug," as used herein, includes all medicines for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food," as used herein, includes all articles used for food or drink by man, whether simple, mixed, or compound. Any article is deemed to be adulterated within the meaning of this section:

(*a*) **Drugs deemed to be adulterated.** In case of drugs: (1) If, when sold under or by a name recognized in the United States Pharmacopœia, it differs materially from the standard of strength, quality, or purity laid down therein; (2) If, when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work; (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

(*b*) **Food deemed to be adulterated.** In the case of food: (1) If any substance or substances have been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength, or purity; (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; (4) If it is an imitation of, or is sold under the name of, another article; (5) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not; or in the case of milk, if it is the produce of a diseased animal; (6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; (7) If it contains any added substance or ingredient which is poisonous or injurious to health. En. February 14, 1872. **Am'd.** 1905, 769.

383. The amendment is a consolidation of the present section 383 with the statute of 1895, page 71. Section 4 of the statute has, however, been omitted as unnecessary.—Code Commissioner's Note.

§ 383*a*. **Sale of process or renovated butter.** Any person, firm, or corporation, who sells or offers for sale, or has in his or its possession for sale, any butter manufactured by boiling, melting, deodorizing, or renovating, which is the product of stale, rancid, or decomposed butter, or by any other process whereby stale, rancid, or decomposed butter is manufactured to resemble or appear like creamery or dairy butter, unless the same is plainly stenciled or branded upon each and every package, barrel, firkin, tub, pail, square, or roll, in letters not less than one half inch in length, "process butter," or "renovated butter," in such a manner as to advise the purchaser of the real character of such "process" or "renovated" butter, is guilty of a misdemeanor. En. Stats. 1905, 770.

383a. A section of the statute of 1899, page 25, is here codified.—Code Commissioner's Note.

§ 384. **Setting fire to woods, grain, etc.** Every person who willfully or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain, on any lands not his own, is guilty of a misdemeanor, and pun-

ishable by fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both. En. February, 14, 1872. Am'd. 1905, 758.

384. The amendment designates the punishment, and in this respect conforms the section to the statute of 1871-2, page 96, on the same subject, and inserts, after the word "lands," the words "not his own," to conform the section to what was obviously the intent of the legislature.—Code Commissioner's Note.

§ 384*a*. **Keeping fires within certain limits.** Every person who starts a fire in hay, grain, stubble, grass, weeds, or woodland, without first carefully providing by plowing or otherwise, for the keeping of such fire within and upon the premises upon which it is started or set, whereby any property of an adjoining or contiguous resident or owner is injured or destroyed, is guilty of a misdemeanor. En. Stats. 1905, 758.

384a. This is a codification of the statute of 1891, page 473, concerning the subject set forth in the section.—Code Commissioner's Note.

§ 384*b*. **Camp fire.** Every person who, upon departing from a camp or camping place, willfully or negligently leaves fire burning or unextinguished, is guilty of a misdemeanor. En. Stats. 1905, 758.

384b. This is a codification of that part of section 5 of the statute of 1875-6, page 408, respecting the leaving of camp fires unextinguished.—Code Commissioner's Note.

§ 384*c*. **Animals injured by persons hunting.** Every person who willfully and negligently, while hunting upon the inclosed lands of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor. En. Stats. 1905, 673.

384c. This is a codification of sections 4 and 5 of the statute of 1875-6, page 408, respecting the wounding of animals while hunting upon the lands of another.—Code Commissioner's Note.

§ 397*b*. **Liquors, selling of to minors; permitting minor to visit saloons; not to apply to parents.** Every person who sells, gives or delivers to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor or manager

of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years, to visit said saloon or public house where intoxicating liquors are sold, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment; *provided*, that this section shall not apply to the parents of such children, or to guardians of their wards. En. Stats. 1905, 673.

397b. This is a codification of the act of the last session (Stats. 1903, p. 319), respecting the sale of intoxicating liquors to children.—Code Commissioner's Note.

§ 400. En. 1873-4, 433; amended and re-enacted as § 401; Stats. 1905, 770.

400, 401. There being two sections numbered 400 and 401, the one relating to the encouragement of suicide has been numbered 401.—Code Commissioner's Note.

§ 401. **Aiding in suicide.** Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony. As § 400 En. Stats. 1873-4, 433. Renumbered and amended 1905, 770.

See note to § 400, ante.

§ 401*a*. **Cubic feet of space in rooms.** Every person who owns, leases, lets, or hires to any person any room in any building, house, or other structure within the limits of any incorporated city, or city and county, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space in the clear for each person occupying such room or apartment, and every person found sleeping or lodging in, or who hires or uses for the purpose of sleeping or lodging in any room or apartment which contains less than five hundred cubic feet of space in the clear for each person so occupying such room or apartment, is guilty of a misdemeanor. En. Stats. 1905, 770.

401a. This is a codification of the statute of 1875-6, page 759, concerning lodging-houses and sleeping apartments.—Code Commissioner's Note.

§ 402¼. En. 1877-8, 116, as § 401, amended and renumbered as 402¼ by act of 1891, 27. Amended and renumbered as § 402*a* by amendment 1905, 771. See post, 402*a*.

§ 402½. En. 1880, 41, as § 401; amended and renumbered 402½, 1891, 27. Renumbered as § 402*b*, Stats. 1905, 771. See post, § 402*b*.

§ 402¾. En. Stats. 1903, 216. Amended and renumbered 402*c*, 1905, 771. See post, § 402*c*.

§ 402*a*. **Adulteration of candies.** Every person who adulterates candy by using in its manufacture terra alba or other deleterious substances, or who sells or keeps for sale any candy or candies adulterated with terra alba, or any other deleterious substance, knowing the same to be adulterated, is guilty of a misdemeanor. En. Stats. 1877-8, 116, as section 401. **Am'd.** 1891, 27; 1905, 771.

402a (402¼). Section 402¼ for purposes of convenience is renumbered 402a.—Code Commissioner's Note.

§ 402*b*. **Diseased animal to be killed.** Every animal having glanders or farcy shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor. En. Stats. 1880, 41, as section 401. **Am'd.** 1891, 27; 1905, 771.

402b (402½). Section 402½ is renumbered 402b.—Code Commissioner's Note.

§ 402*c*. **Construction of unsafe scaffolding, ladders, etc.** Any person or corporation employing or directing another to do or perform any labor in the construction, alteration, repairing, painting or cleaning of any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe or improper scaffolding, slings, hangers, blocks, pulleys, stays, braces, ladders, irons, ropes or other mechanical contrivances, or who hinders or

obstructs any officer attempting to inspect the same under the provisions of "An act to amend an act entitled 'An act to establish and support a bureau of labor statistics, approved March 3, 1883' approved February 20, 1901," or who destroys, defaces or removes any notice posted thereon by such officer or permits the use thereof, after the same has been declared unsafe by such officer, contrary to the provisions of said section twelve of said act, shall be guilty of a misdemeanor. En. Stats. 1903, 216, as section 402¾. Amended and renumbered 1905, 771.

402c (402¾). The change consists in the renumbering of section 402¾ to 402c.—Code Commissioner's Note.

§ 402*d*. **Animals affected with contagious diseases to be kept within inclosure.** Any person owning or having possession or control of any animal affected by any contagious or infectious disease, who fails to keep the same within an inclosure, or herd the same in some place where it is secure from contact with other animals of like kind not so affected, or who suffers such infected animal to be driven on the public highway or to range where it is likely to come in contact with other animals not so affected, is guilty of a misdemeanor, and punishable by a fine of not more than five hundred dollars for each offense. En. Stats. 1905, 771.

402d. This is a codification of the statute of 1893, page 302.—Code Commissioner's Note.

§ 420. **Preventing person from entering upon public lands.** Every person who unlawfully prevents, hinders, or obstructs any person from peaceably entering upon or establishing a settlement or residence on any tract of public land of the United States within the State of California, subject to settlement or entry under any of the public land laws of the United States; or who unlawfully hinders, prevents, or obstructs free passage over or through the public lands of the United States within the State of California, for the purpose of entry, settlement, or residence, as aforesaid, is guilty of a misdemeanor. En. Stats. 1877-8, 117. Rep. Stats. 1880, 1. En. Stats. 1905, 675.

420. This a codification of the statute of 1887, page 147.—Code Commissioner's Note.

§ 421. **National Guard, discrimination against members of.** No association or corporation shall by any constitution,

rule, by-law, resolution, vote or regulation, discriminate against any member of the National Guard of California because of his membership therein. Any person who willfully aids in enforcing any such constitution, rule, by-law, resolution, vote or regulation against any member of said National Guard of California, is guilty of a misdemeanor. En. Stats. 1905, 190.

§ 424. **Public officers, embezzlement and falsification of accounts by.** Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:—

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,

2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,

3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

5. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

6. Willfully omits to transfer the same, when such transfer is required by law; or,

7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same;—

Is punishable by imprisonment in the state prison for not less than one nor more than ten years, and is disqualified from holding any office in this state. En. February 14, 1872. Am'd. 1880, 39; 1905, 53.

§ 442. **Unlawful conversion of military property.** Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the National Guard, or in any manner pawn or pledge any arms, uniforms, equipments, or other military property of

the State of California, or of any company of the National Guard shall be guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 144.

§ 443. En. February 14, 1872. Rep. 1905, 145.

§ 459. Supp. Cal. Rep. Cit. 143, 129.

§ 460. Supp. Cal. Rep. Cit. 144, 754.

§ 461. Supp. Cal. Rep. Cit. 143, 599.

§ 463. Supp. Cal. Rep. Cit. 144, 754.

§ 470. **Forgery of wills, conveyances, etc.** Every person who, with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he has no authority so to do, to, or falsely makes, alters, forges, or counterfeits, any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, bond, covenant, bank bill or note, postnote, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or any assignment of any bond, writing obligatory, promissory note, or other contract for money or other property; or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above

named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery. En. February 14, 1872. **Am'd.** 1905, 673.

470. The change consists in the insertion of the words "or of a fictitious person," in the beginning of the section. The purpose of the amendment is to make the forging of the name of a fictitious person, or knowingly signing the name of another, criminal if done with intent to defraud.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 139, 68; 143, 119.

§ 474. Forging telegraph or telephone messages. Every person who knowingly and willfully sends by telegraph or telephone to any person a false or forged message, purporting to be from a telegraph or telephone office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph or telephone, or who furnishes, or conspires to furnish, or causes to be furnished to any agent, operator, or employé, to be sent by telegraph or telephone, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. En. February 14, 1872. **Am'd.** 1905, 674.

474. The change consists in the insertion of the words "or telephone" "telegraph."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 143, 119; 143, 128.

§ 481. Counterfeiting railroad or steamship tickets. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars or vessels of such company, or who utters, publishes, or puts

into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad or steamship company, or any lessee thereof, or any other person, is punishable by imprisonment in the state prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine. En. Stats. 1873-4, 433. Am'd. 1905, 675.

481. The change consists in the insertion of the words "or steamship" after "railroad," and "or vessels" after "cars."—Code Commissioner's Note.

§ 482. **Restoring canceled railroad or steamship tickets.** Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part removes, conceals, fills up, or obliterates, the cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company, or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad or steamship company, or lessee thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad or vessel of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. En. Stats. 1873-4, 433. Am'd. 1905, 675.

482. The words "or steamship" are twice inserted after "railroad."—Code Commissioner's Note.

§ 484. Supp. Cal. Rep. Cit. 143, 129. Subd. 2—139, 636.

§ 487. Supp. Cal. Rep. Cit. 140, 662; 144, 252.

§ 489. Supp. Cal. Rep. Cit. 140, 662.

§ 496. **Receiver of stolen property.** Every person who, for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by im-

prisonment in the state prison not exceeding five years, or in the county jail not exceeding six months; and it shall be presumptive evidence that such property was stolen, if the same consists of jewelry, silver, or plated ware, or articles of personal ornament, if purchased or received from a person under the age of eighteen years, unless such property is sold by such minor at a fixed place of business carried on by such minor or his employer. En. February 14, 1872. **Am'd.** 1873-4, 464; 1905, 718.

496. The change consists in the omission of the words "or both" after "months." Obviously it was not the intention of the legislature that the same offense should be punishable by imprisonment in both the state prison and the county jail.—Code Commissioner's Note.

§ 497. Receiving property stolen in another state. Every person who, in another state or country steals or embezzles the property of another, or receives such property knowing it to have been stolen or embezzled, and brings the same into this state, may be convicted and punished in the same manner as if such larceny, or embezzlement, or receiving, had been committed in this state. En. February 14, 1872. **Am'd.** 1905, 718.

497. The object of the amendment is to enlarge the scope of the section to include cases of embezzlement, and to accomplish this purpose the words "or embezzle" have been inserted after "steals," the word "embezzled" has been inserted after "stolen," and the words "or embezzlement" have been inserted after "larceny."—Code Commissioner's Note.

§ 499b. Taking motor vehicle, bicycle, etc., temporarily, a misdemeanor. Any person who shall, without the permission of the owner thereof, take any automobile, bicycle, motorcycle, or other vehicle, for the purpose of temporarily using or operating the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment. En. Stats. 1905, 185.

§ 503. Supp. Cal. Rep. Cit. 142, 218; 143, 594.

§ 504. Supp. Cal. Rep. Cit. 143, 67; 143, 68.

§ 508. Supp. Cal. Rep. Cit. 143, 594.

§ 512. **Intent to restore property.** The fact that the accused intended to restore the property embezzled, is no ground of defense or mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, or an indictment found by a grand jury, charging the commission of the offense. En. February 14, 1872. Am'd. 1905, 682.

512. The change consists in the insertion of the words "or an indictment found by a grand jury," after "magistrate."—Code Commissioner's Note.

§ 513. **Actual restoration a ground for mitigation of punishment.** Whenever, prior to an information laid before a magistrate, or an indictment found by a grand jury, charging the commission of embezzlement, the person accused voluntarily and actually restores or tenders restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense, but it authorizes the court to mitigate punishment, in its discretion. En. February 14, 1872. Am'd. 1905, 682.

513. The change consists in the insertion of the words "or an indictment found by a grand jury," after "magistrate."—Code Commissioner's Note.

§ 514. **Punishment.** Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it must be taken as its value; if the embezzlement or defalcation is of the public funds of the United States, or of this state, or of any county or municipality within this state, the offense is a felony, and is punishable by imprisonment in the state prison not less than one nor more than ten years; and the person so convicted is ineligible thereafter to any office of honor, trust, or profit in this state. En. February 14, 1872. Am'd. 1880, 8; 1905, 682.

514. The amendment substitutes "in" for "under" before the word "this," thus making a person convicted of embezzlement ineligible to any office in this state, whether it be a state office or not.—Code Commissioner's Note.

§ 525. Supp. Cal. Rep. Cit. 145, 637.

§ 526. **Sale of tickets to theater, etc.** Every person who sells or offers for sale any ticket or tickets to any theater or other public place of amusement at a price in excess of that charged originally by the management of such theater or public place of amusement is guilty of a misdemeanor. En. Stats. 1905, 140.

§ 529. **Personating another in private or official capacity.** Every person who falsely personates another in either his private or official capacity, and in such assumed character, either:

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety;

2. Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true; or,

3. Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

Is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding five thousand dollars. En. February 14, 1872. Am'd. 1905, 684.

529. The change consists in the insertion of the words "in either his private or official capacity," after "another," the amendment being designed with the purpose of changing the construction put upon this section in People v. Knox, 119 Cal. 73, where it was held that the section did not apply to a case where a person falsely assumes an official character.—Code Commissioner's Note.

§ 530. **Receiving money or property in a false character.** Every person who falsely personates another, in either his private or official capacity, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable

in the same manner and to the same extent as for larceny of the money or property so received. En. February 14, 1872. **Am'd. 1905, 684.**

530. With the same object in view as in the amendment to the preceding section, the words "in either his private or official capacity" have been inserted after "another."—Code Commissioner's Note.

§ 532. Obtaining money, property, or labor by false pretenses. Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained. En. February 14, 1872. **Am'd. 1889,** 14; 1905, 685.

532. The amendment is intended to make it criminal to procure the labor or services of another, or to defraud him of real property, by representations known to be false. With respect to real property, this changes the rule announced in People v. Cummings, 114 Cal. 437. The change consists in the addition of the words "whether real or personal," after "property."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 140, 662; 145, 737.

§ 537. En. Stats. 1887, 87. **Am'd.** 1893, 119. Rep. 1905, 685.

There were formerly two sections of this number. The one repealed was the one enacted in 1887. The other which was enacted in 1889 and amended in 1903 is still in force. See Penal Code, 1903, p. 202.

Code Commissioner Davis in his report on this section, says:

537. There are two sections numbered 537. The one regarding the removal of mortgaged chattels is repealed, the matter contained in it being sufficiently provided for in section 538.—Code Commissioner's Note.

§ 537½. En. Stats. 1889, 35. Amended and renumbered as 537*a*, 1905, 685. See post, § 537*a*.

§ 537¾. En. Stats. 1903, 153. Amended and renumbered as 537*b*, 1905, 685. See post, § 537*b*.

§ 537*a*. **Fraudulent registration of cattle.** Every person who by any false or fraudulent pretense obtains from any club, association, society, or company, organized for the purpose of improving the breed of cattle, horses, sheep, swine, or other domestic animals, a certificate of registration of any animal in the herd register, or any other register of any such club, association, society, or company, or a transfer of any such registration, and any person who, for a valuable consideration, gives a false pedigree of any animal, with intent to mislead, is guilty of a misdemeanor. En. Stats. 1889, 35, as section 537½. Amended and renumbered 1905, 685.

537a (537½). Section 537½ is renumbered 537a, and the word "valuable" is substituted for "legal," before "consideration." Section 2 is omitted because not properly a part of the Penal Code.—Code Commissioner's Note.

§ 537*b*. **Defrauding owners of livery stables.** Any person who obtains any livery hire or other accommodation at any livery or feed stable, kept for profit, in this state, without paying therefor, with intent to defraud the proprietor or manager thereof; or who obtains credit at any such livery or feed stable by the use of any false pretense; or who after obtaining a horse, vehicle, or other property at such livery or feed stable, willfully or maliciously abuses the same by beating, goading, overdriving or other willful or malicious conduct, or who after obtaining such horse, vehicle, or other property, shall, with intent to defraud the owner, manager or proprietor of such livery or feed stable, keep the same for a longer period, or take the same to a greater distance than contracted for; or allow a feed bill or other charges to accumulate against such property, without paying therefor; or abandon or leave the same, is guilty of a misdemeanor. En. Stats. 1903, 157, as section 537¾. Renumbered 1905, 685.

537b (537¾). Renumbered, but not amended.—Code Commissioner's Note.

§ 538. **Removing mortgaged personal property; further incumbrance or sale.** Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred and fifty-five of the Civil Code, excepting locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such

mortgage, with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situate when mortgaged, without the written consent of the mortgagee, or who sells, transfers, or in any manner further incumbers the said mortgaged property, or any part thereof, or causes the same to be sold, transferred, or further incumbered, is guilty of larceny, and is punishable accordingly; unless at or before the time of making such sale, transfer, or incumbrance, such mortgagor informs the person to whom such sale, transfer, or incumbrance is made, of the existence of the prior mortgage, and also informs the prior mortgagee of the intended sale, transfer, or incumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or incumbrance is to be made. En. Stats. 1893, 120. Am'd. 1905, 686.

538. The amendment extends the operation of the section to cases where personal property is taken, removed, or driven from the county in which it is mortgaged with the intention of defrauding the mortgagee. The change consists in the addition of the words "with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situated when mortgaged, without the written consent of the mortgagee, or who."—Code Commissioner's Note.

There were formerly two sections of this number, one added March 9, 1903, which appears above as amended in 1905. The other, added March 11, 1903, has been amended and renumbered 538a in 1905 and appears below.

§ 538*a*. **Misrepresentation of newspaper circulation.** Every proprietor or publisher of any newspaper or periodical who shall willfully and knowingly misrepresent the circulation of such newspaper or periodical, for the purpose of securing advertising or other patronage, shall be deemed guilty of a misdemeanor. En. Stats. 1893, 132, as section 538. Renumbered and amended 1905, 686.

538a (538). Section 538 is renumbered 538a.—Code Commissioner's Note.

See note to section 538, ante.

§ 538*b*. **Wearing badge of secret society unless entitled to.** Any person who willfully wears the badge, lapel button,

rosette, or other recognized and established insignia of any secret society, order, or organization, or uses the same to obtain aid or assistance within this state, unless entitled to wear or use the same, under the constitution, by-laws, or rules and regulations, or other laws or enactments of such order or society, is guilty of a misdemeanor. En. Stats. 1905, 686.

538b (543½). This section consists of the matter now in section 543½. The change is made by placing the matter in a section in the proper chapter. By some inadvertence the legislature placed it in the chapter providing for the punishment of persons fraudulently fitting out and destroying vessels.—Code Commissioner's Note.

§ 543½. En. Stats. 1899, 90. Rep. 1905, 685.

See ante, § 538*b*, note.

§ 564. **Corporation, officers of, publishing false reports, statements, etc.** Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law, is guilty of a felony. En. February 14, 1872. Am'd. 1875-6, 112; 1905, 683.

564. The amendment is intended to incorporate in the section such provisions of the statute of 1877-8, page 695, as are not already sufficiently expressed therein. The statute, however, is limited to corporations whose stock is listed on the stock board or exchange. The amendment omits this limitation, for the reason that its constitutionality is doubtful. Code Commissioner's Note.

§ 591. **Injuring telegraph or telephone lines.** Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph or telephone, or any other

line used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 683.

591. The change consists in the insertion of the words "or telephone, or any other line used to conduct electricity."—Code Commissioner's Note.

§ 593*a*. **Driving nails, etc., in wood intended for manufacture of lumber.** Every person who maliciously drives or places in any saw-log, shingle-bolt, or other wood, any iron, steel, or other substance sufficiently hard to injure saws, knowing that such saw-log, shingle-bolt, or other wood is intended to be manufactured into any kind of lumber, is guilty of a felony. En. Stats. 1905, 683.

593a. This is a codification of the statute of 1875-6, page 32, relating to the protection of lumber manufacturers.—Code Commissioner's Note.

§ 597. **Cruelty to animals, killing, maiming, torturing, overdriving, overloading, etc.** Every person who maliciously kills, maims, or wounds an animal, the property of another, or who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink or shelter, or to be cruelly beaten, mutilated or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the same, or in any manner abuses any animal, or fails to provide the same with proper food, drink, shelter or protection from the weather, or who cruelly drives, rides or otherwise uses the same when unfit for labor, is for every such offense, guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 678.

597. The amendment consolidates the present section 597 with section 6 of the statute of 1873-4, page 499, as amended 1901, page 285, for the more effectual prevention of cruelty to animals.—Code Commissioner's Note.

§ 597*a*. **Unnecessary torture, suffering or cruelty.** Whoever carries or causes to be carried in or upon any vehicle

or otherwise any domestic animal in a cruel or inhuman manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, is guilty of a misdemeanor; and whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle and its contents, together with the horse or team attached to such vehicle, and deposit the same in some place of custody; and any necessary expense incurred for taking care of and keeping the same, is a lien thereon, to be paid before the same can be lawfully recovered; and if such expense, or any part thereof, remains unpaid, it may be recovered, by the person incurring the same, of the owner of such domestic animal, in an action therefor. En. Stats. 1905, 679.

597a, 597b, 597c, 597d, 597e, 597f. These sections are a codification of sections 7, 8, 9, 11, 12, and 13 of the last-named statute, as amended 1901, page 285.—Code Commissioner's Note.

§ 597*b*. **Fighting animals.** Any person who causes any bull, bear, cock, dog, or other animal to fight for his amusement or for gain, or to worry or injure each other; and any person who permits the same to be done on any premises under his charge or control; and any person who aids, abets, or is present at such fighting or worrying of such animal, as a spectator, is guilty of a misdemeanor. En. Stats. 1905, 679.

See note to § 597*a*, ante.

§ 597*c*. **Training for certain purpose, or being present.** Whoever owns, possesses, keeps, or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement, where preparations are being made for an exhibition of the fighting of birds or animals, with the intent to be present at such exhibition, or is present at such exhibition, is guilty of a misdemeanor. En. Stats. 1905, 680.

See note to § 597*a*, ante.

§ 597*d*. **Arrests without warrants.** Any sheriff, constable, police, or peace officer, or officer qualified as provided in section six hundred and seven *f* of the Civil Code, may

enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present. En. Stats. 1905, 680.

See note to § 597*a*, ante.

§ 597*e*. **Impounding without food or water.** Any person who impounds, or causes to be impounded in any pound, any domestic animal, must supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, is guilty of a misdemeanor. In case any domestic animal is at any time impounded, as aforesaid, and continues to be without necessary food and water for more than twelve consecutive hours, it is lawful for any person, from time to time, as may be deemed necessary, to enter into and upon any pound in which any such domestic animal is confined, and supply it with necessary food and water so long as it remains so confined. Such person is not liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and such animal is not exempt from levy and sale upon execution issued upon a judgment therefor. En. Stats. 1905, 680.

See note to § 597*a*, ante.

§ 597*f*. **Permitting animals to go without care.** Every owner, driver, or possessor of any animal, who shall permit the same to be in any building, inclosure, lane, street, square, or lot, of any city, city and county, or township, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, or officer of the humane society, to take possession of the animal so abandoned or neglected and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid. Every sick, disabled, infirm, or crippled animal which shall be abandoned in any city, city and county, or township, may, if after due search no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace officers, or an officer of said society, to cause the same to be killed on information of such abandonment. Such officer may

likewise take charge of any animal that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in the custody of its owner, such officer shall give notice thereof to such owner, if known, and may provide suitable care for such animal until it is deemed to be in a suitable condition to be delivered to such owner, and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered. En. Stats. 1905, 680.

See note to § 597*a*, ante.

§ 597*g*. **Keepers of stallions, etc.** Every person who lets to mares or jennies any stallion or jack within the limits of any city, town, or village, or within four hundred yards thereof, except in an inclosure sufficient to obstruct the view of all the inhabitants within such limits, and every person in charge of any stallion, bull, boar, ram, or buck goat who turns out or permits such animal to be turned out or run at large in any county, is guilty of a misdemeanor and punishable by a fine of not less than five or more than twenty dollars, or by imprisonment in the county jail not less than thirty days or by both such fine and imprisonment. En. Stats. 1905, 678.

597g. The statute of 1873-4, page 228, to prevent stallions running at large, and of 1887-8, page 437, respecting buck goats, and of 1871-2, page 63, to provide for the keeping of stallions, are codified in this section, and makes the law concerning the running at large of stallions in Sacramento and Mono counties, by extending its provisions, applicable to the state at large.—Code Commissioner's Note.

§ 598*a*. **Killing or detaining homing pigeons.** Every person, other than the owner thereof, who shoots, maims, kills, or detains any Antwerp, messenger, or homing pigeon is guilty of a misdemeanor and punishable by a fine of not less than ten nor more than twenty-five dollars, or by imprisonment in the county jail not exceeding fifty days. En. Stats. 1905, 687.

598a. This is a codification of the statute of 1897, page 37, for the protection of Antwerp messenger or homing pigeons.—Code Commissioner's Note.

§ 599. **Killing gulls or cranes; destroying nests or eggs.** Every person who willfully and knowingly kills or destroys any of that species of sea bird known as gulls, or who willfully and knowingly shoots, wounds, traps, snares, or in any other manner catches or captures any white or blue crane, or who knowingly takes, injures, or destroys the nest of any white or blue crane, or takes, injures, or destroys the eggs of any such crane in the nest or otherwise, is guilty of a misdemeanor and punishable by a fine of not less than five nor more than one hundred dollars, or by imprisonment of not less than five nor more than one hundred days, or by both such fine and imprisonment. En. February 14, 1872. Rep. 1880, 5. Stats. 1905, 687.

599. The statute of 1875-6, page 287, to protect sea-gulls in the neighborhood of Santa Monica, and the statute of 1889, page 205, to prevent the destruction of blue cranes, are codified in this section.—Code Commissioner's Note.

At the same session of the legislature there was adopted another § 599 as follows:

§ 599. **Elk, killing of a felony.** Every person who willfully kills any elk within this state is guilty of a felony and punishable by imprisonment in the state prison for a term not exceeding two years. En. February 14, 1872. Rep. 1880, 5. En. Stats. 1905, 218.

§ 599*a*. **Prosecutions.** When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds, is being, or is about to be violated in any particular building or place, such magistrate must issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated association qualified as provided by law, authorizing him to enter and search such building or place, and to arrest any person there present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds, and to bring such person before some court or magistrate of competent jurisdiction, within the city, city and county, or township within which such offense has been committed or attempted, to be dealt with according to law, and such attempt must be held to be a violation of section five hundred and ninety-seven. En. Stats. 1905, 681.

599a. This section is a codification of section 10 of the statute of 1873-4, page 499, as amended 1901, page 285, for the prevention of cruelty to animals.—Code Commissioner's Note.

§ 599*b*. **Words defined.** In this title the word "animal" includes every dumb creature; the words "torment," "torture," and "cruelty" include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" include corporations as well as individuals; and the knowledge and acts of any agent of, or person employed by, a corporation in regard to animals transported, owned, or employed by, or in the custody of, such corporation, must be held to be the act and knowledge of such corporation as well as such agent or employé. En. Stats. 1905, 681.

599b, 599c. Sections 16 and 17 of the statute of 1873-4, page 499, for the more effectual prevention of cruelty to animals, are codified in the above sections.—Code Commissioner's Note.

§ 599*c*. **Not to interfere with game laws.** No part of this title shall be construed as interfering with any of the laws of this state known as the "game laws," or any laws for or against the destruction of certain birds, nor must this title be construed as interfering with the right to destroy any venomous reptile, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state. En. Stats. 1905, 681.

See note to § 599*b*, ante.

§ 599*d*. **Docking of tails.** Whoever shall cut the solid part of the tail of any horse in the operation known as "docking," or in any other operation performed for the purpose of shortening the tail, and whoever shall cause the same to be done, or assist in doing such cutting, is guilty of a misdemeanor. En. Stats. 1905, 681.

599d, 599e. Codifying the statute of 1901, page 287.—Code Commissioner's Note.

§ 599e. Animals to be killed when unfit for work. Every animal which is unfit, by reason of its physical condition, for the purpose for which such animals are usually employed, and when there is no reasonable probability of such animal ever becoming fit for the purpose for which it is usually employed, shall be by the owner or lawful possessor of the same, deprived of life within twelve hours after being notified by any peace officer, or officer of said society, to kill the same, and such owner, possessor, or person omitting or refusing to comply with the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor, and after such conviction the court or magistrate having jurisdiction of such offense shall order any peace officer, or officer of said society, to immediately kill such animal; *provided*, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care. En. Stats. 1905, 681.

See note to § 599*d*, ante.

§ 600. Burning structures, etc., not the subject of arson. Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any structure, snowshed, vessel, or boat, not the subject of arson, or any tent, or any stack of hay or grain or straw of any kind, or any pile of baled hay or straw, or any pile of potatoes, or beans, or vegetables, or produce, or fruit of any kind, whether sacked, boxed, crated, or not, or any growing or standing grain, grass, or tree, or any fence, or any railroad-car, lumber, cord-wood, railroad ties, telegraph or telephone poles, or shakes, or any tule land or peat ground of the value of twenty-five dollars or over, not the property of such person, is punishable by imprisonment in the state prison for not less than one year, nor more than ten years. En. February 14, 1872. **Am'd.** 1901, 268; 1905, 711.

600. The change consists in the insertion of the words "or telephone," before "poles."—Code Commissioner's Note.

§ 601. Using explosives in destroying or injuring buildings, etc. Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, boat, railroad, tramroad, or cable road, or any train, or car, or any depot, stable, car house, theatre, school house, church, dwelling-house, or other place where human

beings usually inhabit, assemble, frequent, or pass and repass, any dynamite, nitro-glycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound or explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and punishable by imprisonment in the state prison not less than one year. En. February 14, 1872. Am'd. 1905, 687.

601. The present section 601 is amended to conform it to section 8 of the statute of 1887, page 110, to protect life and property against the careless and malicious use or handling of dynamite and other explosives.—Code Commissioner's Note.

§ 602. **Malicious injury to freehold.** Every person who willfully commits any trespass by either:

1. Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another;

2. Carrying away any kind of wood or timber lying on such lands;

3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof;

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone;

5. Digging, taking, or carrying away from land in any city or town, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone;

6. Putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto;

7. Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing;

or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or being on any such lands, whether covered by water or not, without the license of the owner or legal occupant thereof; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands;

8. Willfully opening, tearing down, or otherwise destroying any fence on the inclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property; or

9. Entering any inclosure belonging to, or occupied by, another for the purpose of hunting, shooting, killing, or destroying any kind of game within such inclosure, without having first obtained permission from the owner of such inclosure;

Is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 434; 1877-8, 118; 1905, 688.

602. The change consists in the addition of the eighth and ninth subdivisions. The eighth subdivision is a codification of the statute of 1871-2, page 384, and the ninth is a codification of part of section 3 of the statute of 1875-6, page 408, to prevent hunting upon enclosed lands.—Code Commissioner's Note.

§ 603. En. February 14, 1872. Rep. 1905, 689.

603. The section as it now stands declares that certain injuries to trees on the lands of the United States, including the cutting of them, do not constitute public offenses. This is a proper subject for regulation by the United States, and it is obviously improper for the state to undertake to legalize trespasses upon, or injuries to, the public lands of the federal government.—Code Commissioner's Note.

§ 606. Supp. Cal. Rep. Cit. 139, 212; 139, 213.

§ 609. **Damages, etc., to buoy or beacon.** Any person who willfully removes, damages, or destroys any buoy or beacon placed in any waters within this state by lawful authority, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 689.

609. The amendment incorporates the provisions of the statute of 1873-4, page 619, for the protection of buoys and beacons.—Code Commissioner's Note.

§ 619. Disclosing contents of telegraphic or telephonic messages. Every person who willfully discloses the contents of a telegraphic or telephonic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment. En. February 14, 1872. **Am'd.** 1880, 38; 1905, 690.

619. The change consists in the insertion of the words "or telephonic," after "telegraphic."—Code Commissioner's Note.

§ 620. Altering telegraphic or telephonic messages. Every person who willfully alters the purport, effect, or meaning of a telegraphic or telephonic message to the injury of another, is punishable as provided in the preceding section. En. February 14, 1872. **Am'd.** 1905, 690.

620. The change consists in the insertion of the words "or telephonic," after "telegraphic."—Code Commissioner's Note.

§ 621. Opening telegraphic or telephonic messages. Every person not connected with any telegraph or telephone office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope enclosing a telegraphic or telephonic message, addressed to another person, with the purpose of learning the contents of such message, or who fraudulently represents another person and thereby procures to be delivered to himself any telegraphic or telephonic message addressed to such other person, with the intent to use, destroy, or detain the same from the person entitled to receive such message, is punishable as provided in section six hundred and nineteen. En. February 14, 1872. **Am'd.** 1905, 690.

621. The change consists in the insertion of the words "or telephonic," before "office."—Code Commissioner's Note.

§ 626. Quail, partridge, wild duck, rail, curlew, ibis, plover, Wilson snipes, mountain quail, grouse, sage hen. Every person, who, between the fifteenth day of February and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession,

whether taken or killed, in the State of California, or shipped into the state from any other state, territory, or foreign country, any valley quail, or partridge, or any kind of wild duck, or any rail, or any curlew, ibis, plover, or other shore birds (*Limicolae*); or who, between the first day of April and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any Wilson snipe; or who between the fifteenth day of February and the first day of September of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, any mountain quail, grouse, or sage hen, is guilty of a misdemeanor. En. February 14, 1872. **Am'd.** 1875-6, 113; 1877-8, 119; 1880, 41; 1883, 80; 1887, 236; 1891, 472; 1893, 278; 1895, 256; 1897, 90; 1901, 819; 1903, 2; 1905, 255.

§ 626*c*. **Swan, pheasant, bob-white quail.** Every person who takes, kills, or destroys, or has in his possession any swan, or any pheasant, or any bob-white quail, or any variety of imported quail or partridge, is guilty of a misdemeanor. En. Stats. 1895, 257. Rep. 1897, 92. En. 1901, 819. **Am'd.** 1905, 256.

§ 626*d*. **Limit of bag.** Every person who, during any one calendar day, takes, kills, or destroys, or has in his possession, more than twenty-five quail, partridge, doves, snipe, curlew, ibis, plover, rail, or any other shore birds, (*Limicolae*), or more than fifty wild ducks, is guilty of a misdemeanor. En. Stats. 1895, 257. Rep. 1897, 92. En. Stats. 1901, 820. **Am'd.** 1905, 256.

§ 626*f*. **Deer.** Every person who, between the fifteenth day of October and the first day of August of the following year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, any male deer, or any deer meat, is guilty of a misdemeanor. En. Stats. 1895, 258. Rep. 1897, 92. En. Stats. 1901, 820. **Am'd.** 1903, 3; 1905, 256.

§ 626*g*. **Tree squirrel.** Every person who hunts, takes, kills, or destroys, or has in his possession, any species of tree

squirrel, is guilty of a misdemeanor. En. Stats. 1895, 258. Rep. 1897, 92. En. Stats. 1901, 820. **Am'd.** 1905, 256.

§ 626*i*. **Limit of number of deer.** Every person who takes, kills, or destroys, or has in his possession, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, more than two deer, during any one open season, is guilty of a misdemeanor. En. Stats. 1895, 258. Rep. 1897, 92. En. Stats. 1901, 820. **Am'd.** 1905, 256.

§ 626*k*. **Certain game not to be sold.** Every person who buys, sells, offers or exposes for sale, barter or trade, any quail, partridge, dove, pheasant, grouse, sage hen, rail, ibis, plover, or any snipe or other shore bird (*Limicolae*), or any deer meat, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, is guilty of a misdemeanor. En. Stats. 1901, 820. **Am'd.** 1905, 256.

§ 627*a*. **Certain game not to be shipped.** Every railroad company, express company, transportation company, or other common carrier, its officers, agents, and servants, and every other person who transports, carries or takes out of this state, or who receives for the purpose of transporting from this state, any deer, deer skin, buck, doe or fawn, or any quail, partridge, pheasant, grouse, or sage hen or prairie chicken, dove, wild pigeon, or any wild duck, rail, snipe, ibis, curlew, plover, or other shore birds (*Limicolae*) except for the purpose of propagation or scientific purposes, under a permit, in writing, first obtained from the board of fish commissioners of the State of California, or who transports, carries or takes from the state, or receives for the purpose of transportation from the state, the carcass of any such animal of any such bird, or any part of the carcass of any such animal or bird, is guilty of a misdemeanor. En. Stats. 1895, 259. Rep. 1897, 93. En. Stats. 1901, 821. **Am'd.** 1905, 257.

§ 627*b*. **Limit as to shipment of certain game.** Every railroad company, steamship company, express company, transportation company, transfer company, and every other person who ships, or receives for shipment, or transportation, from any one person, during any one calendar day,

more than twenty-five quail, partridge, pheasant, grouse, or sage hen, doves, rail, snipe, curlew, ibis, plover, or other shore birds (*Limicolae*), or more than fifty wild ducks or who transports any of the said birds, or any deer, in any quantity, unless such birds or deer are at all times in open view, and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor. En. Stats. 1895, 259. Rep. 1897, 93. En. Stats. 1901, 821. Am'd. 1905, 257.

§ 628. **Lobster or crawfish.** Every person who, between the first day of April and the fifteenth day of September of each year, buys, sells, takes, catches, kills or has in his possession, any lobster or crawfish; or who at any time has in his possession any lobster or crawfish of less than nine and one-half inches in length, measured from one extremity to the other, exclusive of legs, claws or feelers; or who, at any time, offers for shipment, ships, or receives for shipment or transportation, from the State of California to any place in any other state, territory, or foreign country, any dried shrimp or shrimp shells; or who, between the first day of September and the first day of November of each year, buys, sells, takes, catches, kills, or has in his possession, any crab; or who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any sturgeon, or any female crab, or any crab which shall measure less than six inches across the back, or any abalones or abalone shells of the kind known to commerce as the black abalone (*Haliotis californica*), the shell of which shall measure less than twelve inches around the outer edge of the shell, or any other abalone shells, or abalones, the shell of which shall measure less than fifteen inches around the outer edge of the shell, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1875-6, 114; 1877-8, 120. Rep. 1883, 82. En. Stats. 1895, 260. Am'd. 1897, 347; 1901, 54; 1903, 23; 1905, 186.

§ 628*a*. **Striped bass.** Every person who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any striped bass of less than three pounds in weight, is guilty of a misdemeanor. En. Stats. 1895, 260. Rep. 1897, 348. En. Stats. 1905, 186.

§ 628*b*. **Black bass.** Every person who, between the first day of January and the first day of June of each year, buys,

sells, offers for sale, takes, catches, kills, or has in his possession, any black bass; or who, at any time, except with hook and line, takes, catches or kills any black bass, is guilty of a misdemeanor. En. Stats. 1905, 187.

§ 628*c*. **Young fish of any species; fish in pond or reservoir belonging to state; penalty.** Every person who, by seine or other means, catches the young fish of any species and does not immediately return the same to the water alive, or who buys, sells or offers for sale, or has in his possession, any such fish, whether fresh or dried; or who catches, takes, kills, or carries away any fish from any pond or reservoir belonging to, or controlled by, the board of fish commissioners, or any person or corporation, without the consent of the owners thereof, which pond or reservoir has been stocked with fish; or who, except with hook and line, takes, catches, or kills any kind of fish in any river or stream upon which a fish hatchery is maintained, is guilty of a misdemeanor. Nothing in this section, or elsewhere in this code contained, shall prohibit the United States fish commission and the fish commission of this state, from taking at all times such fish as they may deem necessary for scientific purposes or for purposes of propagation. En. Stats. 1905, 187.

§ 628*d*. **Fine or imprisonment; disposition of fines.** Every person found guilty of a violation of any of the provisions of Sections 628, 628*a*, 628*b*, and 628*c*, shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail, in the county in which the conviction is had, not less than twenty nor more than one hundred and fifty days, or by both such fine and imprisonment. All fines collected for any violation of any of the provisions of said sections must be paid into the state treasury to the credit of the "Fish Commission Fund." En. Stats. 1905, 187.

§ 629. **Screen over mill-race, pipe, etc.; penalty; disposition of fines.** Any person, company, or corporation, owning, in whole or in part, or leasing, operating, or having in charge any mill-race, irrigating ditch, pipe, flume, or canal, taking or receiving its waters from any river, creek, stream, or lake in which fish have been placed, or may exist, shall put, or cause to be placed and maintained, over the inlet of such

pipe, flume, ditch, canal, or mill-race, a screen of such construction and fineness, strength, and quality as shall prevent any such fish from entering such ditch, pipe, flume, canal, or mill-race, when required to do so by the state board of fish commissioners. Any person, company, or corporation violating any of the provisions of this section, or who shall neglect or refuse to put up or maintain such screen, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars or imprisoned in the county jail of the county in which the conviction shall be had not less than ten days, or by both such fine and imprisonment; and all fines imposed and collected for violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "Fish Commission Fund"; *provided*, that the continuance from day to day of the neglect or refusal, after notification in writing by the state board of fish commissioners, shall constitute a separate offense for each day. En. February 14, 1872. Rep. 1883, 82. En. Stats. 1895, 260. **Am'd.** 1903, 24; 1905, 187.

§ 631. **Net, pound, cage, trap, etc., not to be used.** Every person who takes, kills, or destroys, by use of any net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, any of the birds or animals mentioned in this chapter, or who transports, buys, sells, or gives away, offers or exposes for sale, or has in his possession, any of the said birds or animals that have been taken, killed, or captured by the use of any net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, whether taken in the State of California, or shipped into the state from any other state, territory or foreign country, is guilty of a misdemeanor; *provided*, that the same may be taken for the purpose of propagation, or for scientific purposes, written permission having first been obtained from the state board of fish commissioners. Proof of possession of any such birds or animals which do not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, is *prima facie* evidence in any prosecution for violation of the provisions of this section, that the person in whose possession such birds or animals are found, took, killed, or destroyed the same by means of a net, pound, cage, trap, set line or wire. or by the use of poisonous substance. En. February 14, 1872. **Am'd.** 1880, 42; 1881, 73; 1883, 81; 1887, 237; 1895, 261; 1901, 822; 1905, 257.

§ 631*a*. **Penalty for violation.** Every person found guilty of a violation of any of the provisions of sections 626, 626*a*, 626*b*, 626*c*, 626*d*, 626*f*, 626*g*, 626*h*, 626*i*, 626*j*, 626*k*, 626*m*, sections 627, 627*a*, 627*b*, and section 631, must be fined in a sum not less than twenty-five dollars nor more than five hundred dollars, or imprisonment in the county jail of the county in which the conviction shall be had, not less than twenty-five days nor more than one hundred and fifty days, or by both such fine and imprisonment. En. Stats. 1901, 822. Am'd. 1905, 258.

§ 631*c*. **Penalty for violation.** Every person found guilty of a violation of any of the provisions of section 626*e* must be fined in a sum not less than fifty dollars nor more than five hundred dollars or imprisonment in the county jail or the county in which the conviction shall be had, not less than fifty days nor more than one hundred and fifty days, or by both such fine or imprisonment. En. Stats. 1905, 258.

§ 632. **Trout, steelhead trout; limit of catch; penalty; disposition of fines.** Every person who, between the first day of November in any year and the first day of April of the year following, buys, sells, takes, catches, kills, or has in his possession, any variety of trout, except steelhead trout (*Salmo gairdneri*); or who, between the first day of February and the first day of April, or between the tenth day of September and the sixteenth day of October of each year, buys, sells, takes, catches, kills or has in his possession, any steelhead trout (*Salmo gairdneri*); or who between the first day of November and the first day of April of the year following, takes, kills, or catches any steelhead trout above tide water; or who, at any time, buys, sells, or offers for sale, any trout of less than one pound in weight; or who, at any time, takes, catches, or kills any trout except with hook and line; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, more than fifty trout; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, trout, other than steelhead trout, the total weight of which exceeds twenty-five pounds, is guilty of a misdemeanor. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days,

or be punished by both such fine and imprisonment, and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the "Fish Commission Fund." Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such trout as they deem necessary for the purpose of propagation or for scientific purposes. En. February 14, 1872. **Am'd.** 1873-4, 464; 1875-6, 114; 1883, 81; 1895, 260; 1897, 20; 1901, 55; 1903, 24; 1905, 188.

§ 632*a*. **Shipment of trout; penalty; disposition of fines.** Every railroad company, steamship company, express company, transportation company, transfer company, and every other person who ships, or receives for shipment, or transportation, from any one person, during any one calendar day, more than fifty trout, or trout, excepting steelhead trout, the total weight of which exceeds twenty-five pounds, or who transports any trout, in any quantity, unless such trout are at all times in open view, and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor, and is punishable by a fine of not less than twenty dollars, or by imprisonment in the county jail in the county in which the conviction is had, not less than ten days, or by both such fine and imprisonment; and all fines imposed and collected for any violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "Fish Commission Fund." En. Stats. 1895, 261. Rep. 1897, 348. En. Stats. 1905, 188.

§ 634. Supp. Cal. Rep. Cit. 139, 115; 139, 116; 139, 465.

§ 636. Supp. Cal. Rep. Cit. 139, 116; 143, 641.

§ 637*a*. **Killing of birds other than game, meadow lark, etc.; exceptions; certain birds not included.** Every person who, in the State of California, shall at any time, hunt, shoot, shoot at, pursue, take, kill, or destroy, buy, sell, give away, or have in his possession, except upon a written permit from the board of fish commissioners of the State of California, for the purpose of propagation or for education or scientific purposes, any meadow lark, or any wild bird, living or dead, or any part of any dead wild bird, or who shall rob the nest, or take, sell or offer for sale or destroy the eggs of any

meadow lark or of any wild bird, is guilty of a misdemeanor; *provided*, that nothing in this section shall prohibit the killing of a meadow lark or other wild bird by the owner or tenant of any premises where such bird is found destroying berries, fruit or crops growing on such premises, but the birds so killed shall not be shipped or sold. The English sparrow, sharp-shinned hawk, Cooper's hawk, duck hawk, great horned owl, bluejay, house finch (known also as the California linnet), and all birds otherwise protected by the provisions of this code and those birds commonly known as game birds, are not included among the birds protected by this section. En. Stats. 1901, 573. **Am'd.** 1905, 114.

§ 638. **Neglect or postponement of telegraphic or telephonic messages.** Every agent, operator, or employé of any telegraph or telephone office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph or telephone, is guilty of a misdemeanor. Nothing herein contained must be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this state or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime. En. February 14, 1872. **Am'd.** 1905, 690.

638. The change consists in the insertion of the words "or telephone," before "office."—Code Commissioner's Note.

§ 639. **Employé using information contained in telegraphic or telephonic messages.** Every agent, operator, or employé of any telegraph or telephone office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employé, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is pun-

ishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. En. February 14, 1872. **Am'd.** 1905, 690.

639. The change consists in the insertion of the words "or telephone," before "office."—Code Commissioner's Note.

§ 640. Clandestinely learning contents of telegraphic or telephonic messages. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph or telephone line, or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph or telephone office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in section six hundred and thirty-nine. En. February 14, 1872. **Am'd.** 1905, 691.

640. The change consists in the insertion of the words "or telephone," before "line" and before "office."—Code Commissioner's Note.

§ 641. Bribing telegraph or telephone operator. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph or telephone agent, operator, or employé to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employé any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employé, or uses or attempts to use any such information so obtained, is punishable as provided in section six hundred and thirty-nine. En. February 14, 1872. **Am'd.** 1905, 691.

641. The change consists in the insertion of the words "or telephone," before "act."—Code Commissioner's Note.

§ 653b. Abuse of school teachers. Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of

a pupil thereof, is guilty of a misdemeanor. En. Stats. 1873-4, 435, as section 654. Renumbered and amended 1905, 658.

653b. There are now in this Code two sections each numbered 654. The change consists in renumbering the one approved March 30, 1874, to read 653b.—Code Commissioner's Note.

There were formerly two sections 654. The one above renumbered 653b and amended in 1905, was enacted in 1873-4. The other, enacted in 1872, is unchanged.

§ 653c. Unlawful to permit workmen upon public works to work more than eight hours per day. The time of service of any laborer, workman, or mechanic employed upon any of the public works of the State of California, or of any political subdivision thereof, or upon work done for said state, or any political subdivision thereof, is hereby limited and restricted to eight hours during any one calendar day; and it shall be unlawful for any officer, or agent of said state, or of any political subdivision thereof, or for any contractor or sub-contractor doing work under contract upon any public works aforesaid, who employs, or who directs or controls, the work of any laborer, workman, or mechanic, employed as herein aforesaid, to require or permit such laborer, workman, or mechanic, to labor more than eight hours during any one calendar day, except in cases of extraordinary emergency, caused by fire, flood, or danger to life or property, or except to work upon public military or naval defenses or works in time of war. Any officer or agent of the State of California, or of any political subdivision thereof, making or awarding, as such officer or agent, any contract, the execution of which involves or may involve the employment of any laborer, workman, or mechanic upon any of the public works, or upon any work, hereinbefore mentioned, shall cause to be inserted therein a stipulation which shall provide that the contractor to whom said contract is awarded shall forfeit, as a penalty, to the state or political subdivision in whose behalf the contract is made and awarded, ten dollars for each laborer, workman, or mechanic employed, in the execution of said contract, by him, or by any subcontractor under him, upon any of the public works, or upon any work, hereinbefore mentioned, for each calendar day during which such laborer, workman, or mechanic is required or permitted to labor more than eight hours in violation of the provisions of this

act; and it shall be the duty of such officer or agent to take cognizance of all violations of the provisions of said act committed in the course of the execution of said contract, and to report the same to the representative of the state or political subdivision, party to the contract, authorized to pay to said contractor moneys becoming due to him under the said contract, and said representative, when making payments of moneys thus due, shall withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation. Any officer, agent, or representative of the State of California, or of any political subdivision thereof, who shall violate any of the provisions of this section, shall be deemed guilty of misdemeanor, and shall upon conviction be punished by fine not exceeding five hundred dollars, or by imprisonment, not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. En. Stats. 1905, 666.

653c. This is a new section, codifying word for word, the eight-hour law passed at the last session (Stats. 1903, p. 119).—Code Commissioner's Note.

§ 653*d*. **Retaining wages of employé.** Every person who employs laborers upon public works, and who takes, keeps, or receives for his own use any part or portion of the wages due to any such laborers from the state or municipal corporation for which such work is done, is guilty of a felony. En. Stats. 1905, 667.

653d. This is a new section, codifying the statute of 1871-2, page 951, to protect wages of labor, inserting, however, the words "for his own use," to make same conform to intention of original act.—Code Commissioner's Note.

See note to § 653*b*, ante.

§ 654. See note to § 653*b*, ante.

654. There are now in this Code two sections each numbered 654. The change consists in renumbering the one approved March 30, 1874, to read 653b.—Code Commissioner's Note.

§ 654*a*. **False representation as to quality or merits of goods sold or advertised; penalty.** Any person, firm or corporation doing business in this state as a merchant, who advertises or displays any brand of goods known to the general public and quotes prices in connection therewith as an inducement to attract purchasers to the place of busi-

ness so advertised, who shall make verbal or show printed or written false statements regarding the quality or merits of the goods advertised is guilty of a misdemeanor. En. Stats. 1905, 228.

§ 663. Supp. Cal. Rep. Cit. 142, 14.

§ 664. Supp. Cal. Rep. Cit. 142, 14.

§ 666. Second offense, how punished after conviction of former offense. Every person who, having been convicted of petit larceny, or of any offense punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the state prison for any term exceeding five years, such person is punishable by imprisonment in the state prison not less than ten years.

2. If the subsequent offense is such that upon a first conviction, the offender would be punishable by imprisonment in the state prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding five years. En. February 14, 1872. Am'd. 1903, 107; 1905, 667.

666. The amendment consists in the substitution of the word "five" for "ten." At the last session of the legislature, sections 666 and 667 were changed, the former being amended, and the latter repealed. Through a mistake in copying the proposed amendment to section 666, the section, as it now stands, leaves a large class of cases unprovided for. The word "ten," on the fourth line of subdivision 1, has been changed to "five," so that where the punishment for a first conviction would be six, seven, eight, nine, or ten years, some penalty shall attach; for a second conviction for an offense punishable, say by seven, or even ten years, entails no penalty. Judge Carroll Cook called the attention of the Commissioner to the error, and requested the amendment.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 143, 599; 143, 634; 145, 610; 145, 612. Subd. 2—139, 214.

§ 669. Supp. Cal. Rep. Cit. 145, 186.

§ 682. Supp. Cal. Rep. Cit. 145, 37.

§ 686. Supp. Cal. Rep. Cit. 143, 380; 143, 382; 143, 386; 143, 576; 143, 577; 143, 578.

§ 725. En. February 14, 1872. Rep. 1905, 411.

§ 728. En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 411.

§ 729. En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 412.

§ 730. En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 412.

§ 731. En. February 14, 1872. Am'd. 1895, 193. Rep. 1905, 412.

§ 732. En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 412.

§ 733. En. February 14, 1872. Rep. 1905, 412.

§ 758. Supp. Cal. Rep. Cit. 145, 36; 145, 37; 145, 38.

§ 762. Supp. Cal. Rep. Cit. 145, 36; 145, 38.

§ 763. Supp. Cal. Rep. Cit. 145, 36.

§ 770. **Appeal from judgment; defendant suspended until judgment reversed; office filled pending appeal.** From a judgment or decree of removal from office under any provision of this chapter, an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action but until such judgment is reversed, the defendant is suspended from office after thirty days from the entry of the judgment, unless within such thirty days there shall be filed in the office of the clerk of the court in which the conviction was had, a certificate of a judge of the superior court that in his opinion there is probable cause for the appeal. If a bill of exceptions is not settled in time to be used upon an application for such a certificate or within twenty days

after such judgment is entered, the error relied upon may be presented to such judge in any manner satisfactory to such judge. If no such certificate be filed within thirty days the office must pending the appeal be filled as in case of a vacancy. Appeals taken under this section shall be entitled in the appellate court to priority in hearing over all cases except such as have been advanced upon its calendar by special order of such appellate court. En. February 14, 1872. Am'd. 1905, 251.

§ 772. Supp. Cal. Rep. Cit. 145, 37; 145, 45; 145, 473.

§ 777. **Jurisdiction of offenses committed in this state.** Every person is liable to punishment by the laws of this state, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States; and except as herein otherwise provided, the jurisdiction of every public offense is in the county wherein it is committed. En. February 14, 1872. Am'd. 1905, 692.

777. The amendment declares that the jurisdiction of any public offense not otherwise specially provided for is within the county where it was committed. Although this has always been understood to be the law, the Code seems to contain no express declaration upon the subject. The change consists in the addition, after the words "United States," of the words "and except as herein otherwise provided, the jurisdiction of any public offense is in the county wherein it is committed."—Code Commissioner's Note.

§ 778*a*. **Performance of an act in this state culminating in a crime in another state.** Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state. En. Stats. 1905, 692.

778a. The section is designed to provide for the punishment of persons who in this state do an act culminating in the commission of a crime in another state.—Code Commissioner's Note.

§ 778*b*. **Non-resident aiding in a crime in this state.** Every person who, being out of this state, causes, aids, ad-

vises, or encourages any person to commit a crime within this state, and is afterwards found within this state, is punishable in the same manner as if he had been within this state when he caused, aided, advised, or encouraged the commission of such crime. En. Stats. 1905, 692.

778b. The object of this section is to provide for the punishment of persons who, being out of the state, encourage the commission of crimes within this state, and are afterwards found within the state.—Code Commissioner's Note.

§ 784. Kidnaping or abduction. The jurisdiction of a criminal action:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this state, or to be sent out of the state, or from one county to another, or to be sold as a slave, or in any way held to service;

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child;

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution; or,

4. For taking away any female, under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

Is in the county in which the offense is committed, or out of which the person upon whom the offense was committed has in the commission of the offense, been taken, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein. En. February 14, 1872. Am'd. 1880, 11; 1905, 692.

784. The change consists in the substitution of the word "eighteen" for "twenty-five," after "of"; in the substitution of the word "eighteen" for "sixteen," after "of"; and in the insertion of the word "brought" in place of "taken."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 141, 546; 141, 547.

§ 789. Stealing property in another state and bringing it into this state. The jurisdiction of a criminal action for

stealing or embezzling, in any other state, the property of another, or receiving it knowing it to have been stolen or embezzled, and bringing the same into this state, is in any county into or through which such stolen or embezzled property has been brought. En. February 14, 1872. Am'd. 1880, 11; 1905, 693.

789. The change consists in the insertion of the words "or embezzling," after "stealing," and of the words "or embezzled," after the word "stolen."—Code Commissioner's Note.

§ 808. Supp. Cal. Rep. Cit. 145, 743.

§ 809. Supp. Cal. Rep. Cit. 142, 13; 142, 598; 143, 221.

§ 811. Supp. Cal. Rep. Cal. 143, 218; 144, 61.

§ 812. Supp. Cal. Rep. Cit. 143, 218.

§ 818. Supp. Cal. Rep. Cit. 143, 218.

§ 840. **Arrests, when may be made; without warrant, when.** If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant, except when the offense is committed in the presence of the arresting officer. En. February 14, 1872. Am'd. 1905, 693.

840. The purpose of the amendment is to authorize an officer to arrest without a warrant at night-time for a misdemeanor committed in his presence. The change consists in the addition of the words "except when the offense is committed in the presence of the arresting officer."—Code Commissioner's Note.

§ 861. Supp. Cal. Rep. Cit. 139, 212.

§ 869. Supp. Cal. Rep. Cit. 142, 221; 142, 443; 142, 444; 143, 382; 143, 577; 143, 578; 145, 741; 145, 742; 145, 743; 145, 749. Subd. 5—143, 381.

§ 872. **Defendant, when and how committed.** If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe

the defendant guilty thereof, the magistrate must make or indorse on the complaint an order, signed by him, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same." En. February 14, 1872. **Am'd.** 1880, 37; 1905, 763.

872. The change consists in the substitution of the word "complaint" for "deposition," and in the omission of the words "and committed to the sheriff of the county of blank," at the end of the section.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 598; 143, 219; 143, 353.

§ 882. Witness unable to give security may be conditionally examined. When, however, it satisfactorily appears by examination, on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer, in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this code to be conducted, and the witness thereupon discharged; and such deposition may be used upon the trial of the defendant, except in cases of homicide, under the same conditions as mentioned in section thirteen hundred and forty-five; but this section does not apply to an accomplice in the commission of the offense charged. En. February 14, 1872. **Am'd.** 1877-8, 122; 1905, 763.

882. The change consists in the insertion of the words "and such deposition may be used upon the trial of the defendant, except in cases of homicide, under the same condition as mentioned in section 1345," after the word "discharged." Code Commissioner's Note.

§ 888. Supp. Cal. Rep. Cit. 145, 37.

§ 889. Supp. Cal. Rep. Cit. 145, 37.

§ 896. Supp. Cal. Rep. Cit. 139, 429. Subd. 6—139, 428.

§ 907. En. February 14, 1872. Rep. 1905, 693.

907, 908, 909, 910. These sections purport to authorize the court, if an offense is committed during a term of court, but after the grand jury has been discharged, to summon another grand jury. There are now no "terms of court," and any necessity which may arise after one grand jury has been discharged can be met by the drawing of another.—Code Commissioner's Note.

§ 908. En. February 14, 1872. Am'd. 1889, 214. Rep. 1905, 693.

See note to § 907, ante.

§ 909. En. February 14, 1872. Rep. 1905, 693.

See note to § 907, ante.

§ 910. En. February 14, 1872. Rep. 1905, 693.

See note to § 907, ante.

§ 915. **Powers of grand juries.** The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court by indictment. En. February 14, 1872. Am'd. 1905, 694.

915. The change consists in the omission of the words "either by presentment or," after "court." The change is made for the reason that grand juries no longer have authority to prefer presentments.—Code Commissioner's Note.

§ 916. En. February 14, 1872. Rep. 1905, 693.

916. This section relates to and defines presentments by grand juries, and, as they no longer have authority to prefer a presentment, the section is superfluous and misleading.—Code Commissioner's Note.

§ 917. Supp. Cal. Rep. Cit. 145, 36.

§ 919. **Evidence receivable before grand juries.** In the investigation of a charge, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of section six hundred and eighty-six. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence. En. February 14, 1872. Am'd. 1905. 694.

919. The change consists in the omission of the words "for the purpose of either presentment or indictment," after "charge." The change is made because grand juries have no longer authority to prefer presentments.—Code Commissioner's Note.

§ 921. Supp. Cal. Rep. Cit. 144, 638.

§ 923. **May inquire into case of persons imprisoned, etc.** The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the willful or corrupt misconduct in office of public officers of every description within the county. En. February 14, 1872. Am'd. 1905, 694.

923. The change consists in the substitution of the word "or," in place of "and," between "willful" and "corrupt."—Code Commissioner's Note.

§ 925. **When and from whom they may ask advice; who may be present during sessions.** The grand jury may, at all times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever he thinks it necessary; the grand jury, on the demand of the district attorney, whenever criminal causes are being investigated before them, must appoint a competent stenographic reporter to be sworn and to report the testimony that may be given in such causes in shorthand, and reduce the same, upon the request of the district attorney, to longhand or typewriting; a copy of such testimony must be delivered to the defendant upon his arraignment after indictment. The services of such stenographic reporter constitute a charge against the county. No person other than those specified in this and the succeeding section is permitted to be present during the session of the grand jury, except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions, or giving their votes upon any matter before them. The grand jury or district attorney may

require by subpoena the attendance of any person before the grand jury as interpreter, and such interpreter may, while his services are necessary, be present at the examination of witnesses before the grand jury. En. February 14, 1872. Am'd. 1897, 204; 1905, 694.

925. The statute of 1871-2, page 540, authorizing the grand jury or district attorney to require the attendance of an interpreter, is codified in the last sentence.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 141, 399; 144, 636; 144, 637; 144, 638.

§ 928. Supp. Cal. Rep. Cit. 141, 399.

§ 929. Supp. Cal. Rep. Cit. 141, 398; 141, 399.

§ 931. En. February 14, 1872. Rep. 1905, 695.

931, 932, 933, 934, 935, 936, 937. These sections compose Chapter IV of Title IV of Part II of the Penal Code. They relate solely to the proceedings after finding a presentment, and since the adoption of the Constitution of 1879 have been inoperative.—Code Commissioner's Note.

§ 932. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

§ 933. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

§ 934. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

§ 935. En. February 14, 1872. Am'd. 1880, 34. Rep. 1905, 695.

See note to § 931, ante.

§ 936. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

§ 937. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

§ 944. Supp. Cal. Rep. Cit. 145, 37.

§ 950. Supp. Cal. Rep. Cit. 141, 582; 141, 584; 143, 67; 145, 36; 145, 104; 145, 109. Subd. 2—139, 120; 139, 213; 145, 107; 145, 503.

§ 951. Supp. Cal. Rep. Cit. 141, 584; 143, 67; 145, 36; 145, 104; 145, 109.

§ 952. Supp. Cal. Rep. Cit. 141, 582; 141, 584; 143, 67; 145, 36; 145, 104; 145, 109. Subd. 3—145, 107.

§ 954. **May charge different offenses under separate counts relating to same act; election.** The indictment or information may charge different offenses, or different statements of the same offense, under separate counts, but they must all relate to the same act, transaction, or event, and charges of offenses occurring at different and distinct times and places must not be joined. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information, but the defendant can be convicted of but one of the offenses charged, and the same must be stated in the verdict. En. February 14, 1872. Am'd. 1873-4, 437; 1880, 13; 1905, 772.

954. The amendment is designed to authorize an offense to be set forth under different counts, and to excuse the prosecution from electing between them. Justice Shaw of the Supreme Court strongly urges the change.—Code Commissioner's Note.

§ 956. Supp. Cal. Rep. Cit. 142, 107; 142, 108; 142, 109; 142, 110; 143, 353.

§ 957. Supp. Cal. Rep. Cit. 145, 503.

§ 959. Supp. Cal. Rep. Cit. Subd. 6—145, 503.

§ 960. Supp. Cal. Rep. Cit. 139, 116; 143, 353; 145, 504.

§ 964. Supp. Cal. Rep. Cit. 139, 120.

§ 969. **Previous conviction of another offense.** In charging in an indictment or information the fact of a previous conviction of a felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of petit larceny it is sufficient to state, "That the defendant, before

the commission of the offense charged in this indictment or information, was in (giving the title of the court in which the conviction was had) convicted of a felony (or attempt, etc., or of petit larceny)." If more than one previous conviction is charged, the date of the judgment upon each conviction must be stated, but not more than two previous convictions must be charged in any one indictment or information. En. February 14, 1872. **Am'd.** 1873-4, 438. Rep. 1880, 15. En. 1905, 772.

969. This is the section as it existed prior to its repeal in 1880. It is believed that no good reason for such repeal existed.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 13.

§ 971. Supp. Cal. Rep. Cit. 144, 79; 144, 80.

§ 976. Supp. Cal. Rep. Cit. 142, 109.

§ 988. Supp. Cal. Rep. Cit. 145, 610; 145, 611.

§ 995. Supp. Cal. Rep. Cit. 139, 429; 145, 37. Subd. 1—143, 218.

§ 1004. **Demurrer, grounds for.** The defendant may demur to the indictment or information, when it appears upon the face thereof either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirements of sections nine hundred and fifty, nine hundred and fifty-one, and nine hundred and fifty-two;

3. That more than one offense is charged, except as provided in section nine hundred and fifty-four;

4. That the facts stated do not constitute a public offense;

5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution. En. February 14, 1872. **Am'd.** 1880, 18; 1905, 772.

1004. The change consists in the insertion of the words "except as provided in section 954," after "warden." The object

of the amendment is to make this section conform to the proposed change in section 954.—Code Commissioner's Note.

§ 1006. Demurrer allowed, bar to another prosecution, when. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to the same or another grand jury, or directs a new information to be filed; *provided*, that after such order or resubmission, the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases. En. February 14, 1872. **Am'd.** 1880, 18; 1905, 773.

1008. The purpose of the amendment is to authorize, where a demurrer to an indictment is sustained, the resubmission of the charge to the grand jury which found the original indictment, if it has not been discharged. This amendment changes the rule announced in Terrill v. Superior Court, 60 Pac. Rep. 516. To accomplish this, the words "the same or" have been inserted before the word "another."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 143, 217.

§ 1012. Supp. Cal. Rep. Cit. 145, 503.

§ 1017. Supp. Cal. Rep. Cit. Subd. 4—145, 129.

§ 1020. What may be given in evidence under plea of not guilty. All matters of fact tending to establish a defense, other than one specified in the third and fourth subdivisions of section ten hundred and sixteen, may be given in evidence under the plea of not guilty. En. February 14, 1872. **Am'd.** 1880, 44; 1905, 773.

1020. The change consists in the substitution of the word "one" for "that," before "specified."—Code Commissioner's Note.

§ 1025. Previous conviction. When a defendant who is charged in the indictment or information with having suffered a previous conviction, pleads either guilty or not guilty of the offense for which he is indicted or informed against, he must be asked whether he has suffered such previous conviction. If he answers that he has, his answer

must be entered by the clerk in the minutes of the court, and must, unless withdrawn by consent of the court, be conclusive of the fact of his having suffered such previous conviction in all subsequent proceedings. If he answers that he has not, his answer must be entered by the clerk in the minutes of the court, and the question whether or not he has suffered such previous conviction must be tried by the jury which tries the issue upon the plea of not guilty, or in case of a plea of guilty, by a jury impaneled for that purpose. The refusal of the defendant to answer is equivalent to a denial that he has suffered such previous conviction. In case the defendant pleads not guilty, and answers that he has suffered the previous conviction, the charge of the previous conviction must not be read to the jury, nor alluded to on the trial. En. Stats. 1873-4, 439. Rep. 1880, 19. En. 1905, 773.

1025. This is the section as it existed prior to its repeal in 1880. By such repeal no provision was left for any plea to a charge of former conviction, and it is believed this should be provided for in the Code.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 13.

§ 1033. **When action may be removed.** A criminal action may be removed from the court in which it is pending on application of the defendant, on the ground that a fair and impartial trial cannot be had in the county. En. February 14, 1872. **Am'd.** 1880, 19; 1887, 61; 1905, 695.

1033. The change consists in the omission of the word "first," after "pending," and of the words "where the action is pending. Second—On the application of the district attorney on the ground that from any cause no jury can be obtained for the trial of the defendant in the county where the action is pending," after "county," the provision relative to a change of the place of trial in a criminal action on application of the district attorney having been held unconstitutional in People v. Powell, 87 Cal. 348.—Code Commissioner's Note.

§ 1034. **Application for removal, how made.** The application for removal must be made in open court, and in writing, verified by the affidavit of the defendant, a copy of which application must be served upon the district attorney at least one day prior to the hearing of the application. At the hearing the district attorney may serve and file such counter affidavits as he may deem advisable.

Whenever the affidavit of the defendant shows that he cannot safely appear in person to make such application because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney, and must be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a felony, and he has not at the time of such application, been arrested or given bail, or been arraigned, or pleaded or demurred to the indictment or information. En. Feb. 14, 1872. **Am'd.** 1887, 61; 1905, 695.

1034. The design of the amendment is to conform this section to the amendment to the last section. The change consists in the insertion of the words "for removal," after "application"; in the omission of the words "or of the district attorney, as the case may be," after "defendant"; in the insertion of the word "district," after "the"; in the omission of the words "of the adverse party," after "attorney"; and in the insertion after "application," of the sentence "At the hearing the district attorney may serve and file such counter affidavits as he may deem advisable."—Code Commissioner's Note.

§ 1036. Supp. Cal. Rep. Cit. 142, 357.

§ 1038. Supp. Cal. Rep. Cit. 142, 357.

§ 1046. Supp. Cal. Rep. Cit. 144, 756.

§ 1057. Supp. Cal. Rep. Cit. 139, 64.

§ 1059. Supp. Cal. Rep. Cit. 145, 295.

§ 1068. Supp. Cal. Rep. Cit. 139, 216.

§ 1076. Supp. Cal. Rep. Cit. 139, 429; 140, 271; 142, 445; 145, 298.

§ 1093. Supp. Cal. Rep. Cit. Subd. 1—143, 601; 145, 613.

§ 1102. Supp. Cal. Rep. Cit. 142, 294.

§ 1103*a*. **Perjury, how proved.** Perjury must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances. En. Stats. 1905, 696.

1103a. This section is composed of matter taken from section 1968 of the Code of Civil Procedure.—Code Commissioner's Note.

§ 1108. Abortion and seduction, evidence upon a trial for. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence. En. February 14, 1872. **Am'd.** 1905, 696.

1108. The amendment consists in the substitution of the word "eighteen" for "twenty-five." The purpose is to conform the section to the provisions of section 266.—Code Commissioner's Note,

§ 1110. False pretenses, evidence of. Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any labor, money, or property, whether real or personal, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof is in writing, subscribed by or in the handwriting of the defendant, or unless the pretense is proven by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section does not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property. En. February 14, 1872. **Am'd.** 1905, 696.

1110. The amendment consists in the insertion of the word "labor" before "money," and in the substitution of the words "or property, whether real or personal," in place of "personal property," thus conforming the section to the amendment to section 532.—Code Commissioner's Note.

§ 1111. Supp. Cal. Rep. Cit. 139, 720; 139, 727; 141, 232; 143, 265; 144, 472.

§ 1118. Supp. Cal. Rep. Cit. 143, 691; 143, 693; 143, 694; 143, 695; 143, 696; 143, 698; 145, 739.

§ 1127. Supp. Cal. Rep. Cit. 139, 111.

§ 1128. Supp. Cal. Rep. Cit. 143, 210; 143, 212.

§ 1135. Supp. Cal. Rep. Cit. 143, 210.

§ 1136. Supp. Cal. Rep. Cit. 143, 210.

§ 1143. Supp. Cal. Rep. Cit. 138, 273.

§ 1147. **Return of jury.** When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried. En. February 14, 1872. **Am'd.** 1905, 697.

1147. The change consists in the omission of the words "at the same or another term," after "tried," because there are now no terms of court.—Code Commissioner's Note.

§ 1158. Supp. Cal. Rep. Cit. 145, 610; 145, 611.

§ 1159. Supp. Cal. Rep. Cit. 143, 13; 142, 14; 143, 149; 143, 435; 144, 47.

§ 1170. Supp. Cal. Rep. Cit. 142, 93. Subd. 3—145, 738.

§ 1171. **When to be settled and signed.** When the defendant desires to have exceptions taken at the trial settled in a bill of exceptions, the draft of a bill must be prepared by him, and presented to the judge for settlement within ten days after judgment has been entered against him, or, if the judge is absent from the county, or ill, so that such presentation cannot be made, the draft must, within that period, be delivered to the clerk for the judge. Notice in writing of the intended presentation of such draft to the judge, or of the delivery thereof to the clerk, must be served upon the district attorney at least two days before such presentation or delivery. When received by the clerk, he must note thereon the date of such receipt, and transmit or deliver the same to the judge at the earliest period practicable. The judge must, immediately upon the draft being presented or delivered to him, desig-

nate a time for the settlement of the bill, and, if the parties are not present, require the clerk to notify them in writing of such date. The time so fixed must not be changed for inconvenience to a party, except upon good cause, shown by affidavit of necessity therefor. When settled and engrossed, the bill must be signed by the judge and filed with the clerk. En. February 14, 1872. Am'd. 1873-4, 447; 1881, 6; 1905, 761.

1171, 1174. The design of the amendment to these sections is to bring about as far as possible an avoidance of the delay now so common in getting criminal cases to a hearing in the Supreme Court, and to require bills of exceptions in criminal cases to be settled as expeditiously as is compatible with the circumstances of the case. The phraseology of the present section is changed in certain respects to more clearly express its purpose. The clerk is required, upon receipt of the draft to note such receipt thereon; and the judge, upon receipt thereof, is required to immediately designate a time for settlement and have the parties notified thereof, if not present. The time so fixed cannot be changed for the convenience of a party, except upon good cause shown by affidavit.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 93.

§ 1174. How to be settled. When a party desires to have an exception mentioned in the last two sections settled in a bill of exceptions, the draft of a bill must, within ten days after the order or ruling complained of is made, be prepared and presented or delivered by him on notice as provided in section eleven hundred and seventy-one, and thereupon the same proceedings must be had for the settlement of such proposed bill in all respects as are provided in the last mentioned section. The time specified in this section and section eleven hundred and seventy-one, within which the draft of a bill of exceptions must be presented to the judge or delivered to the clerk, may be extended for a reasonable period by the trial judge, or, in his absence from the county or inability to act, by a justice of the supreme court, but only for good cause and upon affidavit showing the necessity therefor, presented upon written notice of at least two days to the adverse party, who shall have the right to file counter affidavits. In no case can the time be extended by stipulation of the parties. If the judge in any case refuses to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the supreme court to prove the same, such applica-

tion to be made in the mode and manner and under such regulations as that court may prescribe; and the bill when proven must be certified by the chief justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in this section, apply to the supreme court to prove the same. En. February 14, 1872. Am'd. 1873-4, 448; 1905, 761.

See note to § 1171, ante.

§ 1175. Supp. Cal. Rep. Cit. 145, 63.

§ 1176. **Written charges need not be excepted to.** When written instructions have been presented, and given, modified, or refused, or when the charge of the court has been taken down by the reporter, the questions presented in such instructions or charge need not be excepted to or embodied in a bill of exceptions; but the judge must make and sign an indorsement upon such instructions, showing the action of the court thereon, and certify to the correctness of the reporter's transcript of the charge; and thereupon the same, with the indorsements, become a part of the record, and any error in the action of the court thereon may be reviewed on appeal in like manner as if presented in a bill of exceptions. En. February 14, 1872. Am'd. 1905, 762.

1176. The purpose of this amendment is to correct imperfections and confusion in the language of the present section, and to more clearly point out the duty of the judge in noting his action upon instructions requested by the parties.—Code Commissioner's Note.

§ 1177. **Bills of exceptions in criminal actions, amendment of; settled, and time fixed for engrossment.** If the bill of exceptions proposed does not substantially conform to the requirements of section 1175 of this code, the judge before whom the cause was tried may cause the same to be amended so as to conform to said section, or the adverse party may, within ten days after the receipt of such proposed bill, serve and file amendments thereto; the amendments herein provided for shall be thereafter settled by the judge upon a day to be fixed by him, not more than ten

days after the service and filing of such proposed amendments; after said bill of exceptions shall have been settled as herein provided for, the judge may fix a time within which the same shall be engrossed by the party presenting the same and when so engrossed and signed by the judge, the same shall constitute the engrossed and final bill of exceptions in the action or proceeding. En. Stats. 1905, 475.

§ 1181. Supp. Cal. Rep. Cit. 139, 216; 143, 210; 143, 589.

§ 1182. **New trial, application for, when made.** The application for a new trial must be made before judgment, and the order granting or denying the same must be immediately entered by the clerk in the minutes. En. February 14, 1872. **Am'd.** 1905, 697.

1182. The change consists in the addition of the words "and the order granting or denying the same must be immediately entered by the clerk in the minutes" after "judgment," and is designed to conform the section to the present practice.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 92; 142, 97.

§ 1185. **Motion in arrest of judgment.** A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment or information mentioned in section ten hundred and four, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. When determined, the order must be immediately entered by the clerk in the minutes. En. February 14, 1872. **Am'd.** 1880, 25; 1905, 697.

1185. The change consists in the addition of the words "when determined, the order must be immediately entered by the clerk in the minutes," after "judgment," and is designed to conform this section to the present practice.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 145, 503.

§ 1186. **Court may arrest judgment without motion.** The court may also, of its own motion, arrest the judgment for

any of the defects mentioned in the last section, by an order for that purpose entered upon its minutes. En. February 14, 1872. Am'd. 1905, 698.

1186. See note to section 1185.—Code Commissioner's Note.

§ 1187. **Effect of arresting judgment.** The effect of an order arresting the judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed. En. February 14, 1872. Am'd. 1880, 25; 1905, 698.

1187. The purpose of this amendment is to give the same effect to an order of the court made on its own motion under section 1186 as section 1187 now gives to an order made on motion of the defendant.—Code Commissioner's Note.

§ 1191. **Appointing time for judgment.** After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict. En. February 14, 1872. Am'd. 1873-4, 449; 1905, 763.

1191. The change consists in the omission of the words "if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed," after "verdict," because the courts are always open.—Code Commissioner's Note.

§ 1192. Supp. Cal. Rep. Cit. 141, 551; 141, 552.

§ 1200. Supp. Cal. Rep. Cit. 142, 97.

§ 1201. **What causes may be shown against judgment.** He may show, for cause against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him insane, the question of insanity must be tried as provided in chapter six, title ten, part two of this code. If, upon the trial of that question, the jury finds that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to the state hospital for the care and treatment of the insane, until he becomes sane; and when notice is given of that fact, as provided in section one thousand three hundred and seventy-two, he must be brought before the court for judgment;

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial. En. February 14, 1872. **Am'd.** 1905, 764.

1201. The change consists in the substitution of the words "a state hospital for the care and treatment of the insane" for "lunatic asylum," after "to."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 97. Subd. 2—142, 94.

§ 1203. Inquiry into aggravation or mitigation of punishment; defendant placed on probation on plea or verdict of guilty. After plea or verdict of guilty, where discretion is conferred upon the court as to the extent of the punishment, the court, upon oral suggestion of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct. In such cases and after the case of the defendant has been investigated by the probation officer and a written report filed of record in the court in accordance with this statute, and in accordance with section 131 of the Code of Civil Procedure, the court shall have power in its discretion to place the defendant upon probation in the manner following, if it shall appear to the judge, by such report so furnished by the probation officer or otherwise, as to any such defendant over the age of sixteen years so having pleaded guilty or having been convicted of crime, that there are circumstances in mitigation of the punishment or that the ends of justice and the interest of society and the reform of the defendant will be subserved thereby, viz.:

1. The court, judge or justice thereof may suspend the imposing of sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum possible term of such sentence, and upon such terms and conditions as it shall determine, and shall place such person on probation, under the charge and supervision of the probation officer of said court during such suspension, or under the charge and supervision of the probation officer of the court of another county, where the court shall deem it best because of the residence or place of occupation or employment of the person so released on probation, or because the ends of justice or reform of such person will be best subserved thereby.

2. If the judgment is to pay a fine, and that the defendant be imprisoned until it be paid, the court, judge, or justice, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum possible term of such sentence, and on such terms, as it shall determine, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, to the end that he may be given the opportunity to pay the fine; *provided, however,* that upon payment of the fine being made, judgment shall be satisfied and the probation cease.

3. At any time during the probationary term of the person released on probation, in accordance with the provisions of this section, any probation officer may, without warrant, or other process, at any time until the final disposition of the case, rearrest any person so placed in his care and bring him before the court. If in the opinion of the officer it is for the interest of justice and of society and the reform of such person that his probation be revoked and that he be committed to prison, such officer shall file his written recommendation thereof of record in the court; or the court may of its own motion in its discretion, issue a warrant for the rearrest of any such person and may thereupon or upon such written recommendation of such probation officer, revoke and terminate such probation, if the interest of justice and of society, or the reform of the person will be subserved thereby, and if the court, in its judgment, shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed upon probation is violating the conditions of his probation, or engaging in any criminal or immoral practices, or has become abandoned to improper associates, or a vicious life. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time after the said suspension of the sentence within the longest period for which the defendant might have been sentenced, but if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall have full force and effect, and the person shall be delivered over to the proper officer to serve his sentence, and the time during which the execution of such judgment was suspended shall not count as any part of any term of imprisonment provided for, by, or resulting under such judgment.

4. The court shall have power at any time during the term of probation to revoke or modify its order of suspension of imposition or execution of sentence. It may, at any time, when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation and discharge the person so held, and in all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall, at the end of the term of probation, be by the court discharged. En. February 14, 1872. **Am'd.** 1903, 34; 1905, 162.

§ 1206. Judgment to pay fine constitutes a lien. A judgment that a defendant pay a fine with or without the alternative of imprisonment constitutes a lien in like manner as a judgment for money rendered in a civil action. En. February 14, 1872. **Am'd.** 1905, 764.

1206. The amendment makes the section applicable whether the fine was imposed with or without the alternative of imprisonment. (See People v. Brown, 113 Cal. 35.)—Code Commissioner's Note.

§ 1207. Entry of judgment. When judgment upon a conviction is rendered, the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, if any, and must, within five days, annex together and file the following papers, which constitute a record of the action:

1. The indictment or information, and a copy of the minutes of the plea or demurrer;

2. A copy of the minutes of the trial;

3. The written instructions given, modified, or refused, with the indorsements thereon, and the certified transcript of the charge of the court; and,

4. A copy of the judgment. En. February 14, 1872. **Am'd.** 1873-4, 449; 1880, 26; 1905, 764.

1207. The design of the amendment is to conform the section to the amendment to section 1176. To effect this the words "and the certified transcript of the charge of the court" are inserted after "thereon."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 145, 10.

§ 1214. If for fine alone. If the judgment is for a fine with or without imprisonment, execution may be issued

thereon as on a judgment in a civil action. **En.** February 14, 1872. **Am'd.** 1905, 698.

1214. The amendment makes the rule of the section applicable, though the punishment include imprisonment as well as fine. (See People v. Brown, 113 Cal. 35.)—Code Commissioner's Note.

§ 1217. Supp. Cal. Rep. Cit. 141, 554.

§ 1221. **Insanity of defendant, how determined.** If, after his delivery to the warden for execution, there is good reason to believe that a defendant, under judgment of death, has become insane, the warden must call such fact to the attention of the district attorney of the county in which the prison is situated, whose duty it is to immediately file in the superior court of such county a petition, stating the conviction and judgment, and the fact that the defendant is believed to be insane, and asking that the question of his sanity be inquired into. Thereupon the court must at once cause to be summoned and impaneled, from the regular jury list of the county, a jury of twelve persons to hear such inquiry. En. February 14, 1872. **Am'd.** 1891, 273; 1905, 698.

1221. The amendment is designed to permit the warden to act without procuring the concurrence of the judge of the superior court, and requires the district attorney to act upon the suggestion of the warden by filing a petition and taking proceedings thereunder to ascertain whether the defendant is insane.—Code Commissioner's Note.

§ 1222. **Duty of district attorney upon hearing.** The district attorney must attend the hearing, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court. En. February 14, 1872. **Am'd.** 1905, 699.

1222. The change consists in the substitution of the word "hearing" for "inquisition."—Code Commissioner's Note.

§ 1223. **Order of court committing insane person to hospital.** The verdict of the jury must be entered upon the minutes, and thereupon the court must make and cause to be entered an order reciting the fact of such inquiry and the result thereof, and when it is found that the defendant is

insane, the order must direct that he be taken to one of the state hospitals for the insane, and there kept in safe confinement until his reason is restored. En. February 14, 1872. Am'd. 1891, 273; 1905, 699.

1223. The amendment requires the verdict to be entered upon the minutes, and the court to thereupon enter an order for the confinement of the defendant in a hospital if he is found to be insane.—Code Commissioner's Note.

§ 1224. **Defendant found to be sane, duty of warden.** If it is found that the defendant is sane, the warden must proceed to execute the judgment as specified in the warrant; if it is found that the defendant is insane, the warden must suspend the execution, and transmit a certified copy of the order mentioned in the last section to the governor, and deliver the defendant, together with a certified copy of such order, to the medical superintendent of the hospital named in such order. When the defendant recovers his reason, the superintendent of such hospital must certify that fact to the governor, who must thereupon issue to the warden his warrant, appointing a day for the execution of the judgment. En. February 14, 1872. Am'd. 1891, 273; 1905, 699.

1224. The amendment provides for the action to be taken when the defendant recovers his reason, and consists in striking out all of the words following "execution," and in substituting new provisions in lieu thereof.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 141, 554.

§ 1225. **Proceedings when female is supposed to be pregnant.** If there is good reason to believe that a female against whom a judgment of death is rendered is pregnant, such proceedings must be had as are provided in section twelve hundred and twenty-one, except that instead of a jury, as therein provided, the court may summon three disinterested physicians, of good standing in their profession, to inquire into the supposed pregnancy, who shall, in the presence of the court, but with closed doors, if requested by the defendant, examine the defendant and hear any evidence that may be produced, and make a written finding and certificate of their conclusion, to be approved by the court and spread upon the minutes. The provisions of section twelve hundred and twenty-two apply to the proceedings upon such inquiry. En. February 14, 1872. Am'd. 1891, 273; 1905, 699.

1225. The amendment conforms the section to the proposed change in section 1221.—Code Commissioner's Note.

§ 1226. If female is not pregnant, duty of warden. If it is found that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant the warden must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the governor. When the governor receives from the warden a certificate that the defendant is no longer pregnant, he must issue to the warden his warrant appointing a day for the execution of the judgment. En. February 14, 1872. **Am'd.** 1891, 274; 1905, 699.

1226. The change consists in the insertion of the words "certified copy of the finding and certificate," and in the addition of the provision relative to the Governor's issuing his warrant upon receiving a certificate from the warden.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 141, 554.

§ 1227. Judgment of death remaining in force, not executed; no appeal from order of court. If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the district attorney of the county in which the conviction is had, must order the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden of the state prison to whom the sheriff is directed to deliver the defendant execute the judgment at a specified time. The warden must execute the judgment accordingly. From an order directing and fixing the time for the execution of a judgment, as herein provided, there is no appeal. En. February 14, 1872. **Am'd.** 1891, 274; 1905, 700.

1227. The change consists in the addition of the last sentence, which provides that no appeal can be taken from the order fixing the time for the execution of the judgment.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 141, 554.

§ 1235. By whom taken on questions of law. Either party in a prosecution by indictment or information may ap-

peal to the supreme court on questions of law alone, as prescribed in this chapter. En. February 14, 1872. Am'd. 1905, 700.

1235. The amendment is designed to make the section conform to Article VI, section 4, of the Constitution, which provides that the Supreme Court has jurisdiction "in all criminal cases prosecuted by indictment or information in a court of record, on questions of law alone," it having been held (in People v. Jordan, 65 Cal. 644) that it has jurisdiction in all such cases, and that if its jurisdiction by appeal is restricted to cases of felony, it would devolve upon it to establish some appropriate system of appellate procedure by which it could review all other convictions based upon an indictment or information.—Code Commissioner's Note.

§ 1238. In what cases by the people. An appeal may be taken by the people:

1. From an order setting aside the indictment or information;

2. From a judgment for the defendant on a demurrer to the indictment, accusation or information;

3. From an order granting a new trial;

4. From an order arresting judgment;

5. From an order made after judgment, affecting the substantial rights of the people. En. February 14, 1872. Am'd. 1880, 26; 1897, 195; 1905, 700.

1238. The change consists in the omission of subdivision 6, because the court cannot make the order therein referred to, its action being limited to advising the jury to acquit; and if this advice is followed, an appeal is necessarily unavailing, because a defendant after his acquittal cannot be placed upon trial. (See People v. Stoll, 28 Cal. Dec., p. 22.)—Code Commissioner's Note.

§ 1240. How taken. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party. En. February 14, 1872. Am'd. 1905, 701.

1240. The change consists in the omission of the words "or filed," after "entered."—Code Commissioner's Note.

§ 1241. Notice served by publication, when. If personal service of the notice can not be made, the judge of the court in which the action was tried, upon proof thereof, by affidavit filed therein, may make an order for the publication

of the notice in some newspaper, for a period not exceeding thirty days. Such publication is equivalent to personal service. En. February 14, 1872. **Am'd.** 1905, 701.

1241. The change consists in the insertion of the words "by affidavit filed therein," after "thereof," the present section being entirely silent respecting the mode of proof.—Code Commissioner's Note.

§ 1243. Supp. Cal. Rep. Cit. 144, 657.

§ 1245. **Effect of an appeal by defendant.** If before the granting of the certificate, the execution of the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody. En. February 14, 1872. **Am'd.** 1905, 701.

1245. The change consists in the insertion of the words "the execution of the" before "judgment."—Code Commissioner's Note.

§ 1258. Supp. Cal. Rep. Cit. 139, 116; 139, 162; 141, 534; 144, 756; 145, 504.

§ 1259. Supp. Cal. Rep. Cit. 145, 738.

§ 1262. Supp. Cal. Rep. Cit. 143, 220.

§ 1264. **Judgment upon appeal, how entered and remitted.** When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry, with a copy of the opinion of the court attached thereto, forthwith remitted to the clerk of the court from which the appeal was taken. En. February 14, 1872. **Am'd.** 1905, 701.

1264. The design of the amendment is to require a copy of the opinion of the Supreme Court to be certified to and sent to the clerk of the court below with the remittitur. The change consists in the insertion of the words "with a copy of the opinion of the court attached thereto," after "entry."—Code Commissioner's Note.

§ 1305. **How forfeited, and how forfeiture discharged.** If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully

required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, must thereupon be declared forfeited. But if at any time within twenty days after such entry in the minutes, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just. En. February 14, 1872. **Am'd.** 1905, 701.

1305. The words "within twenty days after such entry in the minutes" are substituted for the words "before the final judgment of the court," after "time."—Code Commissioner's Note.

§ 1306. Forfeiture to be enforced by action. If the forfeiture is not discharged, as provided in the last section, the district attorney may at any time after twenty days from the entry upon the minutes, as provided in the last section, proceed by action against the bail upon their undertaking. En. February 14, 1872. **Am'd.** 1905, 702.

1306. The amendment is designed to conform the section to the amendment to section 1305, and the change consists in the substitution of the words "twenty days from the entry upon the minutes, as provided in the last section" for the words "the adjournment of the court," after the word "after."—Code Commissioner's Note.

§ 1307. Deposit of money, when forfeited, how disposed of. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, at the end of thirty days, unless the court has before that time discharged the forfeiture, pay over the money deposited to the county treasurer. En. February 14, 1872. **Am'd.** 1905, 702.

1307. The change consists in the insertion of the words "at the end of thirty days, unless the court has before that time discharged the forfeiture," in place of the words "immediately after the adjournment of the court."—Code Commissioner's Note.

§ 1322. When husband and wife are competent witnesses. Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or

in cases of criminal violence upon one by the other, or in cases of criminal actions or proceedings brought under the provisions of section 270 of this code, or in cases of criminal actions or proceedings for bigamy. En. February 14, 1872. Am'd. 1873-4, 451; 1905, 140.

§ 1323. Supp. Cal. Rep. Cit. 143, 388; 145, 506.

§ 1335. **Examination of witnesses conditionally.** When a defendant has been held to answer a charge for a public offense, he, in all cases, and the people in cases other than of homicide, may, either before or after an indictment or information, have witnesses examined conditionally in his or their behalf, as prescribed in this chapter. En. February 14, 1872. Am'd. 1880, 27; 1905, 702.

1335, 1336, 1337, 1338, 1339, 1340, 1341. By the amendment to the above sections, the provisions of the statute respecting the conditional examination of witnesses have been extended so far as may be constitutionally done, to the end that the prosecution, except in cases of homicide, may have the same privilege as the accused of taking conditionally the testimony of witnesses who are about to leave the state, or who are so sick and infirm as to afford reasonable grounds for apprehending that they will be unable to attend the trial. The proposed change is within the contemplation of that part of section 13 of Article I of the Constitution, which provides that "the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend the trial."—Code Commissioner's Note.

§ 1336. **In what cases an order may be applied for.** When a material witness for the defendant, or for the people, is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehension that he will be unable to attend the trial, the defendant or the people may apply for an order that the witness be examined conditionally. En. February 14, 1872. Am'd. 1905, 702.

See note to § 1335, ante.

§ 1337. **Application, how made.** The application must be made upon affidavit stating:

1. The nature of the offense charged;
2. The state of the proceedings in the action;

3. The name and residence of the witness, and that his testimony is material to the defense or the prosecution of the action;

4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial. En. February 14, 1872. **Am'd.** 1905, 703.

See note to § 1335, ante.

§ 1338. Application, to whom made. The application may be made to the court or a judge thereof, and must be made upon three days' notice to the opposite party. En. February 14, 1872. **Am'd.** 1880, 5; 1905, 703.

See note to § 1335, ante.

§ 1339. Order, what to contain. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and before a magistrate designated therein. En. February 14, 1872. **Am'd.** 1905, 703.

See note to § 1335, ante.

§ 1340. Defendant has right to be present at examination. The defendant has the right to be present in person and with counsel at such examination, and if the defendant is in custody, the officer in whose custody he is, must be informed of the time and place of such examination, and must take the defendant thereto, and keep him in the presence and hearing of the witness during the examination. En. February 14, 1872. **Am'd.** 1905, 703.

See note to § 1335, ante.

§ 1341. Examination not to proceed, when. If, at the time and place so designated, it is shown to the satisfaction of the magistrate that the witness is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place. En. February 14, 1872. **Am'd.** 1905, 703.

See note to § 1335, ante.

§ 1367. Supp. Cal. Rep. Cit. 142, 538.

§ 1368. Doubt as to sanity of defendant; examination of, before jury; stay of proceedings. If at any time during the pendency of an action up to and including the time when defendant is brought up for judgment on conviction a doubt arises as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity. En. February 14, 1872. **Am'd.** 1873-4, 452; 1880, 28; 1905, 222.

§ 1370. Verdict of the jury as to sanity, and proceedings thereon. If the jury finds the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury finds the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to a state hospital for the care and treatment of the insane, and that upon his becoming sane he be redelivered to the sheriff. En. February 14, 1872. **Am'd.** 1873-4, 453; 1880, 29; 1905, 704.

1370. The change consists in the substitution of the words "a state hospital for the care and treatment of the insane," in the place of "insane asylum."—Code Commissioner's Note.

§ 1372. Defendant detained in hospital until he becomes sane. If the defendant is received into the state hospital he must be detained there until he becomes sane. When he becomes sane, the superintendent must certify that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the state hospital, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged. En. February 14, 1872. **Am'd.** 1905, 704.

1372. The change consists in the substitution of the words "state hospital" for "asylum."—Code Commissioner's Note.

§ 1373. Expenses of sending, etc., defendant to hospital, a charge against county. The expenses of sending the defendant to the state hospital, of keeping him there, and of

bringing him back, are in the first instance chargeable to the county in which the indictment was found, or information filed; but the county may recover them from the estate of the defendant, if he has any, or from a relative, town, city, or county bound to provide for and maintain him. En. February 14, 1872. **Am'd.** 1880, 29; 1905, 704.

1873. The change consists in the substitution of the words "state hospital" for "asylum."—Code Commissioner's Note.

§ 1382. Supp. Cal. Rep. Cit. 140, 658; 144, 56.

§ 1385. Supp. Cal. Rep. Cit. 143, 599; 144, 635.

§ 1387. Dismissal of actions, order for a bar in misdemeanor but not in felony. An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, unless such order is explicitly made for the purpose of amending the complaint in such action, in which instance such order for dismissal of the action shall not act as a bar to a prosecution upon such amended complaint; but an order for the dismissal of the action is not a bar if the offense is a felony. En. February 14, 1872. **Am'd.** 1905, 724.

1887. Inserts in the section relating to an order for dismissal being a bar in cases of misdemeanor, a provision that where the order explicitly is made for the purpose of allowing an amended complaint to be filed, the order for dismissal shall not constitute a bar. This revision corrects a manifest abuse. The bill is earnestly urged by the district attorney of Napa county.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 143, 599; 144, 48.

§ 1388. Judgment suspended in the case of a minor, when. Final judgment may be suspended on any conviction, charge, or prosecution of a minor, for misdemeanor or felony, where in the judgment of the court in which such proceeding is pending there is reasonable ground to believe that such minor may be reformed, and that a commitment to prison would work manifest injury in the premises. Such suspension may be for as long a period as the circumstances of the case may seem to warrant, and subject to the following further provisions: During the period of such suspension, or of any extension thereof, the court or judge may, under such limitations as may seem advisable, commit such

minor to the custody of the officers or managers of any strictly nonsectarian charitable corporation conducted for the purpose of reclaiming criminal minors. Such corporation, by its officers or managers, may accept the custody of such minor for a period of two months (to be further extended by the court or judge should it be deemed advisable), and should said minor be found incorrigible and incapable of reformation, he may be returned before the court for final judgment for his offense. Such charitable corporation must accept the custody of said minor as aforesaid, upon the distinct agreement that it and its officers will use all reasonable means to effect the reformation of such minor, and provide him with a home and instruction. No application for guardianship of such minor by any person, parent, or friend can be entertained by any court during the period of such suspension and custody, save upon recommendation of the court before which the criminal proceedings are pending. Such court may further, in its discretion, direct the payment of the expenses of the maintenance of such minor during such period of two months, not to exceed, in the aggregate, the sum of twenty-five dollars, which sum includes board, clothing, transportation, and all other expenses, to be paid by the county where such criminal proceeding is pending, or direct action to be instituted for the recovery thereof out of the estate of such minor, or from his parents. Such court may also revoke such order of suspension at any time. En. Stats. 1883, 377. Am'd. 1905, 704.

1388. The change consists in the insertion of the words "of a minor," after "prosecution," and in the insertion of the word "the" before "custody."—Code Commissioner's Note.

§ 1389. En. Stats. 1887, 119. Rep. 1905, 761.

1389. The matter now in section 1389, which incorrectly stands in a chapter entitled "Dismissal of the Action," is put into a new section designated as 273e, and is put in its proper chapter, with the other sections relative to children, and section 1389 accordingly repealed.—Code Commissioner's Note.

§ 1404. Supp. Cal. Rep. Cit. 139, 117.

§ 1425. **Jurisdiction of justices' courts.** The justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

1. Petit larceny;

2. Assault or battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony;

3. Breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment. En. Stats. 1905, 705.

1425. This section now contains the matter now in section 115 of the Code of Civil Procedure.—Code Commissioner's Note.

§ 1427. When warrant of arrest must issue; form of warrant; in case of offense by corporation. If the justice of the peace, or police judge, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

"County of ———.

"The people of the State of California to any sheriff, constable, marshal, or policeman in this state:

"Complaint upon oath having been this day made before me, ——— (justice of the peace or police judge, as the case may be), by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith, at (naming the place).

"Witness my hand and seal at ———, this ——— day of ———, A. D. ———.

"A. B."

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest need issue, but the justice of the peace or police judge must issue a summons substantially in the form prescribed in section thirteen hundred and ninety-one. Such summons must be served at the time and in the manner designated in section thirteen hundred and ninety-two. At the time named in the summons the corporation may appear by counsel and answer the complaint. If it does not appear, a plea of not guilty must be entered, and the same proceedings had

therein as in other cases. En. February 14, 1872. **Am'd.** 1905, 706.

1427. The changes consist in the matter providing a mode for compelling a corporation to appear in response to a complaint accusing it of a misdemeanor.—Code Commissioner's Note.

§ 1457. Defendant discharged upon payment of fine; disposition of fine. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and pay over the fine within ten days to county treasurer if the offense is prosecuted for the violation of a state law in a justice's court; *provided* that all fines and forfeitures collected in any police court or city justice's court that is maintained, and the salaries of the officers thereof paid by the city, whether prosecuted for a violation of a state law or a city ordinance shall be paid to the city treasurer of the city in which such court is located; *and further provided*, that all fines and forfeitures collected for the violation of a city or town ordinance, in a justice's court shall be paid over to the city or town treasurer of the city or town in which such ordinance is in force, subject, however, to the provisions of Chapter I of Title XV of Part I of this code. En. February 14, 1872. **Am'd.** 1901, 88; 1905, 177.

Disposition of fines. See post, § 1570.

§ 1475. Writ issued by whom, and before whom returnable. The writ of habeas corpus may be granted:

1. By the supreme court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court, or any justice thereof, or before any superior court, or any judge thereof;

2. By the superior court, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty, in their respective counties. If the writ has been granted by any superior court or judge, and after the hearing thereof the prisoner has been remanded, he shall not be discharged from custody by the same or any other superior court or judge, unless upon some ground not existing at the issuing of the prior writ, or unless upon some point of law not raised at the hearing upon the return of the prior writ. En. February 14, 1872. **Am'd.** 1880, 4; 1905, 706.

1475. The change consists in the addition of the last sentence in subdivision 2. The purpose of the amendment is to prevent one who, after a hearing upon habeas corpus has been remanded to custody, from applying thereafter to the same or another superior court or judge, unless upon some ground not existing at the issuing of the prior writ, or unless upon some point of law not raised at the hearing upon the return of the prior writ.—Code Commissioner's Note.

§ 1476. Writ of habeas corpus to issue without delay; admitted to bail pending determination. Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay; and if the person by or upon whose behalf the application for the writ is made be detained upon a criminal charge, may admit him to bail, if the offense is bailable, pending the determination of the proceeding. En. February 14, 1872. **Am'd.** 1905, 476.

§ 1510. Coroner to summon jury to inquire into cause of death. When a coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed if it has been interred, and summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of deceased is, to inquire into the cause of the death. No such person is exempt from jury duty except at the discretion of the coroner. No person shall be summoned as juror who is related to the decedent or is charged with or suspected of the killing, nor shall any one be summoned who is known to be prejudiced for or against him, but no person selected or summoned to appear as a juror is subject to be challenged by any party. En. February 14, 1872. **Am'd.** 1905, 707.

1510. The amendment consists of the last two sentences. The matter thus added to the section is a codification of a part of the provisions of section 3 of the statute of 1871-2, page 403, as amended by the statute of 1875-6, page 379, respecting jurors summoned to act at coroner's inquests.—Code Commissioner's Note.

See the note of the former Code Commissioners to this statute, p. 586 of the Penal Code of 1903.

§ 1511*a*. **Inquest.** There must be but one inquest upon a body, unless that taken is set aside by the court; and there must be but one inquest held upon several bodies of persons who were killed by the same cause, and who died at the same time. Whenever it appears that an error in the identity of the body has been made by the jury, it is discretionary with the coroner to call another inquest without reference to the court, and a memorandum of the error must be entered upon the erroneous inquisition. En. Stats. 1905, 707.

1511a. This section is a codification of section 6 of the statute of 1871-2, page 403, above referred to.—Code Commissioner's Note.

§ 1511*b*. **To view the body.** After the jury have been sworn and charged by the coroner, they must go together with the coroner to view and examine the body of the deceased person. They must not proceed upon the inquest until they have so viewed the body. After the jury have viewed the body, they may retire to any convenient place to hear the testimony of witnesses and deliberate upon their verdict. For this end the coroner may adjourn the inquest from time to time, as may be necessary. En. Stats. 1905, 708.

1511b. Section 7 of the statute last referred to is codified in this section.—Code Commissioner's Note.

§ 1512. **Witnesses.** Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who in their opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body, or hold a post mortem examination thereon, or a chemist to make an analysis of the stomach or the tissues of the body of the deceased, and give a professional opinion as to the cause of the death. En. February 14, 1872. Am'd. 1905, 708.

1512. The change consists in the insertion of the words "or hold a post mortem examination thereon, or a chemist to make analysis of the tissues of the body of the deceased," after "body." This provision is taken from sections 1 and 2 of the statute of 1871-2, page 403, above referred to.—Code Commissioner's Note.

§ 1513. Witnesses compelled to attend. A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace. En. February 14, 1872. **Am'd.** 1905, 708.

1513. The amendment consists of inserting the word "be" before the word "punished."—Code Commissioner's Note.

§ 1514*a*. Witness to be bound over, when; recognizances. If the jury find that a murder or manslaughter has been committed, the coroner may bind over the witnesses against the accused to appear and testify before the grand jury, or a magistrate, or the superior court, and to obey all orders of such magistrate or court in the premises. Such recognizance must be in writing and must be subscribed by the parties to be bound thereby, and made payable to the people of the State of California in an amount to be fixed by the coroner, and approved by a judge of the superior court; and in case of their refusal to sign such recognizance, the coroner has power to commit such witness as in the case of examination of an accused person by a magistrate. En. Stats. 1905, 708.

1514a. This is a codification of section 15 of the statute of 1871-2, page 408, relating to coroners.—Code Commissioner's Note.

§ 1515. Testimony in writing and where filed. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction, and forthwith filed by him, with the inquisition, and all recognizances taken by him, in the office of the county clerk. En. February 14, 1872. **Am'd.** 1880, 35; 1905, 709.

1515. The change consists in the insertion of the words "and all recognizances taken by him," after the word "inquisition." Code Commissioner's Note.

§ 1541. Depositions, warrants, etc., to be returned to court. The magistrate must annex the depositions, the search warrant and return, and the inventory, and if he has not power to inquire into the offense in respect to which the warrant was issued, he must at once file it and such depositions and return with the clerk of the court having power to so inquire. En. February 14, 1872. **Am'd.** 1905, 709.

1541. The amendment consists in the omission of the word "together," after "annex"; in the omission of all of the section following "inventory," and in the substitution therefor of a provision to the effect that if the magistrate has not power to inquire into the offense, he must file the warrant and the deposition and return with the clerk of the court having power to so inquire.—Code Commissioner's Note.

§ 1547. Rewards for the apprehension of fugitives from justice. The governor may offer a reward not exceeding one thousand dollars ($1000.) payable out of the general fund, for the apprehension—

1. Of any convict who has escaped from the state's prison;

2. Of any person who has committed, or is charged with the commission of an offense punishable with death;

3. For the arrest of each person engaged in the robbery of, or any attempt to rob any person or persons upon or having in charge in whole or in part any stage coach, wagon, railroad train or other conveyance engaged at the time in carrying passengers or any private conveyance within this state.

The reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested. An act entitled an act imposing certain duties upon the governor of the state, approved April 3, 1876, is hereby repealed. En. February 14, 1872. **Am'd.** 1905, 223.

§ 1570. Fines and forfeitures, how disposed of. All fines and forfeitures collected in any court, except police courts and city justices' courts, must be paid to the county treasurer of the county in which the court is held; *provided*, that all forfeitures and fines collected in any court, for the violation of any city or town ordinance shall be paid to the city or town treasurer of the city or town in which such ordinance is in force; *and further provided*, that all fines and forfeitures collected in any police court or city justice's court that is maintained, and the salaries of the officers thereof, paid by the city, shall be paid to the city treasurer of the city in which such court is located, subject, however, to the provisions of Chapter I of Title XV of Part I of this code. En. February 14, 1872. **Am'd.** 1873-4, 454; 1901, 88; 1905, 176.

Disposition of fines. See ante, § 1457.

§ 1573. En. February 14, 1872. Rep. 1905, 645.

1573 to 1588; 1590 to 1595. The above-named sections, which comprise Title I of Part III of the Penal Code, with the exception of the last sentence of section 1593, have been completely superseded by the Constitution of 1879 and the general statutes in pursuance thereof. The portion of section 1593 which is still in force has been incorporated into a bill to amend the statute of 1889, page 404, concerning the state prisons, so that it will be preserved, notwithstanding the repeal of these superseded and therefore useless provisions.—Code Commissioner's Note.

§ 1574. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1575. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1576. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1577. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1578. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1579. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1580. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1581. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1582. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1583. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1584. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1585. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1586. En. February 14, 1872. Am'd. 1880, 31. Rep. 1905, 645.
See note to § 1573, ante.

§ 1587. En. Stats. 1873-4, 467. Rep. 1905, 645.
See note to § 1573, ante.

§ 1588. En. Stats. 1901, 272. Rep. 1905, 645.
See note to § 1573, ante.

§ 1590. En. February 14, 1872. Am'd. 1877-8, 124. Rep. 1905, 645.
See note to § 1573, ante.
Supp. Cal. Rep. Cit. 145, 187; 145, 188.

§ 1591. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1592. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1593. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1594. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1595. En. February 14, 1872. Rep. 1905, 645.
See note to § 1573, ante.

§ 1603. When jail in contiguous county may be used. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the judge of the superior court may, by a written order filed

with the county clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or vacate such order. En. February 14, 1872. **Am'd.** 1905, 709.

1603. The change consists in the substitution of the words "judge of the superior court" in place of "county judge," and in the substitution of the word "order" for "appointment." Code Commissioner's Note.

§ 1605. When jail in contiguous county is not to be used. When a jail is erected in a county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the judge of the superior court of that county must, by a written revocation, filed with the county clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked. En. February 14, 1872. **Am'd.** 1905, 710.

1605. The change consists in the substitution of the words "judge of the superior court" for "county judge."—Code Commissioner's Note.

§ 1615. Hair-cutting for sanitary purposes. Whenever the board of health of any city or county, or the board of supervisors of any county, or the county physician of any county of this state, presents, or causes to be presented to the sheriff, or other officer having charge of any county jail or prison in any county or city, in this state, a certificate, or order, in writing, to the effect that it is by them, or him, considered necessary for the purpose of protecting the public health, or to prevent the introduction or spreading of disease, or to protect or improve the health of criminals under sentence, that the hair of any criminal or criminals be cut, such sheriff, or other officer, must cut, or cause to be cut, the hair of any such person or persons in his charge convicted of a misdemeanor and sentenced to a longer term of imprisonment than fifteen days, to a uniform length of one and one-half inches from the scalp of such person or persons so imprisoned. En. Stats. 1905, 710.

1615. This section is a codification of section 1 of the statute of 1883, page 280, to protect the public health.—Code Commissioner's Note.

INDEX.

FENCES, willfully injuring, a misdemeanor, § 602.

Orphan, representing child to be to manager of orphan asylum, § 271*a*.
Oysters, trespassing upon property where planted, § 602.
Parent, abandonment of child by, § 271*a*.
Parent, failing to provide for child, § 270.
Pawnbroker, refusal of inspection of books or articles to officer, § 343.
Periodical, misrepresenting circulation, § 538*a*.
Poisons, violation of statute regulating sales of, § 347*a*.
Prisoner, communicating with, § 171.
Prisoner, letter, writing or reading matter, taking to or from, § 171.
Prostitution, keeping house of, § 315.
Prostitution, living in house of, § 315.
Public lands, obstructing passage through or over, § 420.
Public lands, preventing entry and settlement, § 420.
Quarantine officer, failure to obey regulations of, § 377*a*.
Railroad, crossing at private passway and leaving open, § 369*d*.
Railroad, employé of becoming intoxicated, § 369*b*.
Railroad neglecting to unload livestock for rest, water and food, § 369*b*.
Railroad, riding or driving vehicle along track or over right of way, § 369*g*.
Railroad track, leading, driving or permitting animals to remain along, § 369*e*.
Reformatory, evil-minded person or vagrant, etc., communicating with inmate, § 171*c*.
Religious meeting, disturbance of, § 302.
Scaffolding and appliances, obstructing inspection of, § 402*c*.
Scaffolding and appliances, removal of notice that unsafe, § 402*c*.
Scaffolding and appliances, unsafe, erection of, § 402*c*.
Secret society, wearing badge of without right, § 538*b*.
Teacher, abusing in presence of pupil a misdemeanor, § 653*b*.
Telegraph lines, injury to or obstruction of, § 591.
Telegraph message, sending, delay, neglect or sending out of order, § 638.